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Supreme Court of the United States

OCTOBER TERM, 1945

No. 605

JACOB SIEGEL COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION

**ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT**

PETITION FOR HABEAS CORPUS FILED NOVEMBER 15, 1945.

HABEAS CORPUS GRANTED JANUARY 2, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 605

JACOB SIEGEL COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT

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1. DOCKET ENTRIES.

May 6-1938	Complaint issued.
May 7-1938	Complaint served.
May 26-1938	Answer filed.
November 5-1938	First Amended Complaint issued.
November 19-1938	Answer to First Amended Complaint filed.
October 19-1939	Order appointing Examiner E. E. Reardon, etc.
October 27-1939	Hearing at Philadelphia.
October 30-31-1939	Hearing at New York.
December 18 & 22-1939	Hearing at Washington, D. C.
January 23-1940	Hearing at Baltimore, Md.
March 29-1940	Motion by counsel for the Commission to amend amended Complaint to conform to proof, with supporting brief.
May 16-1940	Order directing issuance of amended complaint to conform to proof, and directing that the evidence heretofore taken be adopted as evidence in connection with the complaint as so amended.
	Served—Montgomery & McCracken—May 18-1940.
May 16-1940	Second amended complaint issued.
June 4-1940	Answer to second amended complaint filed.
October 7-1940	Hearing at New York.
November 7 & 27 1940	Hearing at Philadelphia.

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Docket Entries.

January 10-1941

Hearing at Philadelphia.

April 12-1941

Examiner's report filed.

April 21-1941

Commission's exceptions filed.

April 22-1941

Respondent's exceptions filed.

April 28-1943

Order—Cease and Desist.

Dissent—Freer (A majority of the Commission do not agree with either Commissioner Freer's statements of facts or his conclusions of law).

June 15-1943

Petition to review—

Circuit Court of Appeals for 3rd Circuit.

2. FIRST AMENDED COMPLAINT.

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Jacob Siegel Company, a corporation, hereinafter referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

Paragraph One: Respondent, Jacob Siegel Company, is a corporation organized and doing business under the laws of the State of Pennsylvania, with its office and principal place of business at 317 North Broad Street, Philadelphia, Pennsylvania. Respondent is now, and for some time past has been, engaged in the business of manufacturing, selling and distributing men's overcoats and topcoats, among which are garments known as "Alpacuna" coats. Respondent causes said coats, when sold, to be transported from the State of Pennsylvania to the purchasers thereof located at points in various other states of the United States and in the District of Columbia. There is now, and has been during all the time herein mentioned, a course of trade by respondent in said overcoats and topcoats in commerce between and among the various states of the United States and in the District of Columbia.

Paragraph Two: In the course and conduct of its business, respondent is now, and has been during all times herein mentioned, engaged in substantial competition with various other corporations and with individuals and firms engaged in offering for sale and selling and distributing overcoats and topcoats in commerce among and between

the various states of the United States and in the District of Columbia.

Paragraph Three. In the course and conduct of its business and for the purpose of inducing the purchase of its coats by retailers for resale and by members of the purchasing public for use, respondent has made use of, and now uses, various types of advertising matter purporting to be descriptive of its said "Alpacuna" coats and their quality and desirability. This advertising matter consisting of swatchbooks and advertising copy for use by retailers in their own advertising of respondent's coats is caused to be transported by respondent from its place of business in Pennsylvania to its retail customers located in the various states of the United States.

The swatchbook of samples sent by respondent to its retailers contains samples of goods from which "Alpacuna" overcoats and "Alpacuna" topcoats are made, which said swatchbooks also contain the following advertising material: A simulated pictorial hemisphere above which are the words "From the four corners of the world", and from points on this run four lines on which appear pictorial representations and words as follows: (1) An Angora goat, with these words underneath: "STRENGTH from the Asiatic Angora", (2) A sheep with these words underneath: "DURABILITY from the American sheep", (3) A Guanaco with these words underneath: "SILKINESS from the Peruvian Guanaco", and (4) An Alpaca with these words underneath: "RICHNESS from the South American Alpaca."

In addition to said swatchbook of samples, the respondent furnishes advertising copy to retail dealers to be so used by said retail dealers and which was, and is, so used by respondent's retailers in their advertising in newspapers having a general circulation in the various states of the United States, and which advertising copy contained

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among others the following statements and representations:

“Q. What is ALPACUNA?”

A. Alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guanaco and Texas Sheep.

Q. Is this an unusual combination?

A. Yes, this combination of hair and wool is the result of 9 years of scientific laboratory research work by a textile genius.”

“Studying the sources of the famous Alpacuna fabric is a real geography lesson. From the South America Andes we took the warm, light, silky hairs of the Alpaca. From the valleys of Old Peru we took the fine, lustrous coat of the Guanaco. From the plains of Turkestan we took the sturdy, durable hairs of the Angora. From the Texas Panhandle we chose the thickest, warmest, and richest sheeps' wool. They were all brought together, and scientifically blended into a fabric that's unmatched for richness, luxury, warmth, light weight, long wear.”

In the manner and through the means above stated, the respondent represents or implies that the material “Alpacuna” is an all-wool and hair fabric containing guanaco or vicugna or vicuna, and that it also contains the foreign fur, hair, or wool of the Angora goat from the plains of Turkestan.

In addition to the advertisements set out above, the respondent also furnishes to its retail dealers other advertising copy to be used by said retail dealers, and which was, and is, so used by respondent's retailers in their advertising in newspapers having a general circulation in the various states of the United States, in which said copy the composition of said fabric is not disclosed though the name of the fabric, to-wit, “Alpacuna” is prominently featured without qualification.

First Amended Complaint.

The use of the term "Alpacuna" by the respondent as descriptive of the fabric used in the manufacture of its overcoats and topcoats constitutes a representation by said respondent to members of the purchasing public that said fabric is composed entirely of the fur, wool, or hair of the Alpaca and the Vicuna, and places in the hands of unscrupulous retailers a means and instrumentality by which such dealers are enabled to increase their own sales by representing that said overcoats and topcoats are all wool and composed solely of the fur, wool and hair of the alpaca and vicuna and thus deceiving the purchasing public.

Paragraph Four: The representations made by respondent with reference to the composition or content of said alpacuna fabric are deceptive, misleading, and false. In truth and in fact the fabric "Alpacuna" is not an all-wool and hair fabric, but contains 32% by weight of cotton. The formula for the manufacture of said material as used by the Continental Mills, Inc., located at Armat and Lena Streets, Philadelphia, Pennsylvania, in the manufacture of material No. 2650, which is manufactured exclusively for the respondent and which is the fabric marketed by the respondent under the name of "Alpacuna" is as follows:

Alpaca	30.6%
Mohair	13.6%
Wool	23.6%
Cotton	32.0%

The cotton content of said fabric appears in the overcoat material only, not in the topcoat material, and is used as a backing for the wool and hair composing the remainder of the fabric. The cotton backing is concealed from the purchasing public by reason of a full lining placed in said overcoats which makes the cotton content not discernable to the purchaser. Both the topcoat fabric and the overcoat fabric known as "Alpacuna" contain no fur, hair, or wool

of the guanaco, vicugna, or vicuna. Said fabric known as "Alpacuna" furthermore does not contain the foreign fur, hair, or wool of the Angora of the plains of Turkestan, but instead said wool is obtained from the domestic Angora goat of the State of Texas.

Paragraph Five: Over a period of many years fabrics made of all-wool or wool and hair have established a reputation as possessing superior cold-resistance qualities over fabrics made from cotton or other materials. Purchasers and prospective purchasers of topcoats and overcoats, on account of such reputation, have a decided preference for such all-wool or wool and hair fabrics over fabrics composed in part of cotton. Purchasers and prospective purchasers of topcoats and overcoats also have a decided preference for vicuna over alpaca, guanaco, angora, sheep's wool, or other similar wool, by reason of its fine quality and reputation, which preference also covers the combination of vicuna and alpaca over the combinations of wool in overcoat and topcoat fabrics.

Paragraph Six: There are among the competitors of respondent many who do not misrepresent their fabrics and overcoats.

Paragraph Seven: The acts and practices of the respondent, as above alleged, in the course of selling and offering for sale its overcoats and topcoats in commerce as described herein, have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasers thereof into the erroneous belief that said representations are true, and into the purchase of respondent's overcoats and topcoats because of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade has been diverted unfairly to the respondent from those of its competitors referred to in Paragraph Six hereof who do not misrepresent their overcoats and top-

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coats. In consequence thereof, injury has been, and is being, done by respondent to competition in commerce among and between the various states of the United States and in the District of Columbia.

Paragraph Eight: The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, The Premises Considered, the Federal Trade Commission on this 5th day of November, A. D., 1938, issues its amended complaint against said respondent.

NOTICE.

Notice is hereby given you, Jacob Siegel Company, a corporation, respondent herein, that the 9th day of December, A. D., 1938, at 2:00 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the amended complaint.

You are notified and required, on or before the twentieth day after service upon you of this amended complaint, to file with the Commission an answer to the amended complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect

to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the amended complaint, file with the Commission an answer to the amended complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the amended complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the amended complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the amended complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the amended complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said amended complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the amended complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief.

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Answer to First Amended Complaint.

in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the amended complaint.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its amended complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 5th day of November, A. D., 1938.

By the Commission.

(Sgd.) OTIS B. JOHNSON

Otis B. Johnson,

(Seal)

Secretary.

3. ANSWER TO FIRST AMENDED COMPLAINT.

The Respondent, Jacob Siegel Company, a corporation, answering the Amended Complaint of the Federal Trade Commission, herein alleges and respectfully shows:

Paragraph One: Admitted.

Paragraph Two: Admitted.

Paragraph Three: Sub-paragraph 1 admitted. Sub-paragraph 2 admitted. The present swatchbook issued for

Spring and Fall 1938 is somewhat modified, though similar.

Sub-paragraph 3 admitted. Advertising copy as set forth, however, comprises only a small portion of the total advertising copy distributed by Respondent.

Sub-paragraph 4 denied. The swatchbook and advertising copy speak for themselves. They do not represent that Alpacuna fabrics contain vicugna or vicuna. A few early advertisements represented that vicugna or vicuna was contained in the fabrics but this was corrected and such advertisements discontinued several years ago. The swatchbook and advertising copy admittedly stress the all-wool-and-hair nature of the fabrics, and Respondent believes and, therefore, avers that they fairly represent the same.

Sub-paragraph 5 admitted. Such advertisements are only a small portion of the total advertising copy distributed by Respondent. Respondent further avers that the name "Alpacuna" is a coined word and a purely arbitrary trade name and contains no representation whatsoever as to the contents of the fabric and that its use in advertising is entirely proper. Respondent duly applied for registration of its trade name "Alpacuna" under the Federal Trade Mark Law on April 24, 1931 and registration was granted September 8, 1931. The registration number of the trade name is No. 286957.

Sub-paragraph 6 denied. Respondent avers that the name "Alpacuna" is a coined word and a purely arbitrary trade name duly registered under the Federal Trade Mark Law as above set forth and is not in any way descriptive of the fabric and that it does not constitute a representation in any way whatsoever as to the contents of the fabric and does not constitute a representation that such fabric is composed of alpaca and vicuna. Respon-

dent further avers that since the name does not constitute any such representation as alleged, it does not place in the hands of unscrupulous retailers, for whom Respondent in any event could not be held responsible, the means of increasing their sales by deceptive representations with respect to the content of the fabrics. Respondent further avers that the purchasing public is not familiar with the merits of alpaca and vicuna and that representations to the public that the same were contained in the overcoat or topcoat fabrics would not in any way result in increased sales.

Paragraph Four: The statements and representations speak for themselves. Respondent denies that they are deceptive, misleading or false in the matters complained of. Alpacuna topcoat fabric is an all-wool-and-hair fabric. Alpacuna overcoat fabric has a cotton backing and its content is approximately as set forth. The alpaca used is commercial alpaca which contains guanaco. Alpacuna overcoats are admittedly full-lined, and Respondent avers that these linings were not inserted for the purpose of deception but that they were inserted to add luxury and in accordance with the general custom of the trade to fully line high quality garments. Both the alpacuna overcoat and topcoat fabrics contain guanaco which is a constituent of commercial alpaca.

For further answer Respondent avers that it manufactures and distributes Alpacuna topcoat fabrics and Alpacuna overcoat fabrics. Approximately 40% of its output constitutes Alpacuna topcoat fabrics and 60% Alpacuna overcoat fabrics.

Alpacuna topcoat fabrics are composed of a blend of alpaca and guanaco obtained from South America, mohair or angora goat obtained from Texas, and domestic wool. The actual product containing alpaca and guanaco is known in the trade as "commercial alpaca" and is obtained from Ariquippa, Peru. That "commercial alpaca"

contains both alpaca and guanaco is generally recognized as appears from the statement of J. Merritt Matthews, textile authority, in his book "Textile Fibers", copy of same being attached hereto, make a part hereof, and marked Exhibit "A". The topcoat fabrics have never had any cotton content, and constitute approximately 40% of Respondent's output, as above set forth.

Alpacuna overcoat fabrics have an outer or face yarn composed of the same materials as the toppers (alpaca, guanaco, mohair and wool). These fabrics in addition have a backing yarn of long staple cotton. The proportion of outer or face yarn to backing yarn is approximately 70% face and 30% backing. Overcoat fabrics with a definite all-wool-and-hair face and a cotton backing were developed by Respondent in 1929. The fabrics were so designed for the definite purpose of obtaining greater warmth and increased durability without adding unduly to the weight of the finished garments. It has been one of the chief features of the Alpacuna overcoat fabrics since their inception. The excellence of this type of construction has been certified to by tests of the fabrics and comparison with competing fabrics. Four reports of such tests by Industrial By-Products & Research Corporation are attached hereto, made a part hereof and marked Exhibits "B-1", "B-2", "B-3" and "B-4".

There has never been any attempt to deceive as to the existence of the cotton backing. It is plainly visible upon examination of the material or sample swatchbook, and it has been generally known ever since the overcoat fabrics were put on the market in 1929 by buyers in the trade. In 1935 the cotton backing on the fabrics was pushed as an advertising feature in the trade and it has been stressed since that time. In January of this year a full double page advertisement for "Men's Wear" was prepared emphasizing the cotton backing construction. This advertisement appeared in "Men's Wear" Magazine on April 6, 1938 and a copy thereof is attached hereto, made a part hereof, and marked Exhibit "C".

Alpacuna overcoats, as set forth above, have been fully lined to give them added luxury and in accordance with the custom generally to line quality products. There was no intention to deceive anybody thereby or hide the cotton backing.

An all-wool-and-hair fabric with a cotton backing is to be distinguished from adulterated products in which the alpaca, guanaco, wool, mohair or other materials used are mixed with cotton before being spun into yarn and the adulterated yarn used in manufacturing finished fabrics. In yarn of this character the cotton is definitely concealed in the body of the yarn and is not apparent.

There has never been any such adulteration in Alpacuna fabrics. Alpacuna overcoat fabrics are composed of two distinct yarns. The outer or face yarn is made of 100% animal fiber containing mohair, wool, alpaca and guanaco. The backing yarn is made of 100% cotton which is not masked in any way and shows clearly on the back of the fabrics. The weight of the face yarn is two and one-third times the weight of the backing yarn and the backing yarn is merely used to hold the nap or face tightly together. There is no other method devised in modern manufacturing technique to duplicate this same construction by the use of any yarn other than cotton or silk. Woolen yarns cannot be spun as fine as cotton or silk and upon the fineness of the backing yarn depends the warmth and durability of the Alpacuna overcoat fabrics.

The method of construction noted was developed by Respondent in 1929. Since that time this method has been widely imitated. There are now at least fifty other manufacturers producing overcoat fabrics with a similar face and backing. Substantially all employ cotton as a backing. Today Respondent manufactures only about 10% of the total of overcoat fabrics so constructed and distributed in the United States. This development of the cotton backing was entirely fostered by Respondent.

Paragraph Five: The reputation and preference for all-wool-and-hair fabrics is admitted. Alpacuna topcoat fabrics are an all-wool-and-hair material; and alpacuna overcoat fabrics are an all-wool-and-hair material with a cotton backing, as set forth above. The construction of fabrics with a definite cotton backing gives greater warmth and increased durability without undue weight, and for further answer generally reference is made to paragraph four above. Preference of purchasers and prospective purchasers of topcoats and overcoats for vicuna over other wool, as set forth, and their preference for the combination of vicuna and alpaca over other combinations of wool, is denied. The purchasing public is not familiar with the merits of vicuna or a combination of alpaca and vicuna as an overcoat or topcoat fabric, and has no preference with respect thereto.

Paragraph Six: Respondent has not accurate knowledge as to the practices of its competitors.

Paragraph Seven: Denied. Each and all of the allegations are denied and Respondent particularly denies that it has misled or deceived anyone and denies that it has created erroneous beliefs. Respondent further avers, as set forth above, that the representations made by it fairly depict its fabrics. Respondent denies that it has in any way unfairly diverted trade from its competitors or injured competitors in commerce. For further answer reference is made to Paragraph 4 hereof.

Paragraph Eight: Denied. Respondent denies that the acts and practices complained of are prejudicial to the public or Respondent's competitors and denies that they constitute unfair methods of competition. For further answer reference is made to Paragraph 4 hereof.

Wherefore, it is respectfully prayed that the complaint be dismissed.

16a **Answer to First Amended Complaint.**

In Witness Whereof, the Respondent Jacob Siegel Company, has caused this Answer to Amended Complaint to be signed by its duly authorized officer at Philadelphia, Pennsylvania, this 17th day of November, 1938.

JACOB SIEGEL COMPANY (Seal)

By JACOB SIEGEL
Pres.

Signed:

ROBERT T. McCracken

LEO WEINROTT

Attorneys for Respondent.

STATE OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss:

Jacob Siegel, being duly sworn according to law, deposes and says that he is President of Jacob Siegel Company, Respondent herein, and authorized to take this affidavit on its behalf and now so does; that the facts set forth in the within Answer to Amended Complaint to the best of his knowledge, information and belief are true and he expects to be able to prove them upon a hearing in this matter.

JACOB SIEGEL

Sworn to and subscribed before me this 17th day of November, A. D. 1938.

RUTH M. WOTIZ

(Seal)

Notary Public

Commission Expires Jan. 19, 1941.

C

Answer to First Amended Complaint—Exhibits 17a
A and B-1.

EXHIBIT "A".

J. MERRITT MATTHEWS, PHD,
states in "Textile Fibers", Page 227:

"Guanaco and Llama are nearly always mixed more
or less with Alpaca and brought into the trade under
the latter name."

.

"The corresponding portions from the different ani-
mals are usually graded together."

EXHIBIT "B-1".

INDUSTRIAL BY-PRODUCTS & RESEARCH
CORPORATION

Consulting Chemical Engineers
To the The Woolen, Worsted & Clothing Industries
Gimbel Building—8th and Market Streets
PHILADELPHIA

April 2, 1934

The Jacob Siegel Co.,
Record Building,
Philadelphia.

Gentlemen:

We have carefully examined the ALPACUNA OVER-
COAT Fabric, which weighs approximately 23 to 24 oz.
per yard, on our Special Heat Retentivity Apparatus.

We have found by actual test that this fabric is 26.3%
warmer than fabrics of equal weight. Comparing the
warmth of the Alpacuna Overcoat against accepted Stand-
ard Overcoatings weighing 8 oz. per yard more, we find the
Alpacuna to be 10.6% warmer.

Respectfully submitted.

INDUSTRIAL BY PRODUCTS & RESEARCH CORP.
S. Weinberg, Pres.

18a Answer to First Amended Complaint—Exhibits
B-2 and B-3.

EXHIBIT "B-2".

INDUSTRIAL BY-PRODUCTS & RESEARCH
CORPORATION

Consulting Chemical Engineers
To The Woolen, Worsted & Clothing Industries
Gimbel Building—8th and Market Streets
Philadelphia

April 2, 1934

The Jacob Siegel Co.,
Record Building,
Philadelphia.

Gentlemen:

We have carefully examined the ALPACUNA OVER-COAT Fabric, which weighs approximately 23 to 24 oz per yard, on our Special Heat Retentivity Apparatus.

We have found by actual test that this fabric is 10% warmer than the average of six standard overcoating fabrics, weighing from 29 to 34 oz. per yard.

Since an overcoat requires approximately three and one quarter yards of material, the ALPACUNA Coat will weigh about one and one half pounds less than the six other standard overcoats examined.

Respectfully submitted,
INDUSTRIAL BY-PRODUCTS & RESEARCH CORP.
S. Weinberg, Pres.

EXHIBIT "B-3".

INDUSTRIAL BY-PRODUCTS & RESEARCH
CORPORATION

Consulting Chemical Engineers
To The Woolen, Worsted & Clothing Industries
Gimbel Building—8th and Market Streets
Philadelphia

April 23, 1934

Answer to First Amended Complaint—Exhibit B-4. 19a

Jacob Siegel Co.,
Record Building,
Philadelphia.

Gentlemen:

At your request we have just completed a Survey of the wearability of your ALPACUNA OVERCOAT against six of the leading overcoat fabrics on the market. The fabrics used in this comparison average 32 oz. per yard, as again: Alpacuna which weighed 24 oz. to the yard.

At 4,000 rubs on a flat bed abrasion machine used in this comparison, two had to be removed because they had gone too far. Two additional samples failed at 5,000 rubs. At 6,000, the last two were eliminated.

The *Alpacuna fabric* was removed at 9,000 rubs, as a result of which we have computed a 61% *greater wearability* than the other fabrics tested.

Respectfully submitted,
INDUSTRIAL BY-PRODUCTS & RESEARCH CORP.
S. Weinberg, Pres.

EXHIBIT "B-4".

INDUSTRIAL BY-PRODUCTS & RESEARCH
CORPORATION

Consulting Chemical Engineers
To The Woolen, Worsted & Clothing Industries
Gimbel Building—8th and Market Streets
Philadelphia

January 29, 1938

Mr. Jacob Siegel
Jacob Siegel Co.
Philadelphia, Pa.

My dear Mr. Siegel:

You will recall that we originally designed the Alpacuna Overcoat Fabric after several years of careful experi-

20a Answer to First Amended Complaint—Exhibit B-4.

mentation, during which we tried to overcome weight and warmth by using density and fineness of fiber. By so doing, we increased the number of fibers actually raised per square inch, over any other napped coating up to that time.

The ultimate effect was that the abundance of these fine fibers tended to catch the external cold air and practically warm it before it was filtered through to the body, in a manner similar to the action of the cilia, or hair in the nostrils, in removing the chills from the air as it enters the nostrils.

When the fabric was finally completed, we made comparative tests against the then known fabrics, in use for overcoats, including Meltons, several popular Wool Fleece, Imported Shetland, and several other finer imported overcoatings.

The Six Competitive Overcoating Fabrics examined by us and used in the comparison, weighed up to 34 oz., against the Alpaca at 26 oz.

All of the comparisons for Abrasive Wear simulated the action of an arm swinging against the side of the coat, where greatest wear takes place. Each fabric was subjected to identical pressure and in the same position with regard to the lay of the nap. By this method, the ratio or percentage of comparative wear was obtained.

EXHIBIT "B-4".

INDUSTRIAL BY-PRODUCTS & RESEARCH
CORPORATION

Jacob Siegel Co.

1/29/38

2.

The warmth comparison was determined by a specially designed heat retentivity machine, in which the identical method of test was applied to each fabric.

Answer to First Amended Complaint—Exhibit B-4. 21a

Trusting this gives you the information you required,
covering the work done on your Alpacuna in the establish-
ment of your promotional data, we are, D

Very truly yours,

S. Weinberg.

SW:G

4. THE EVIDENCE.

Testimony for the Commission.

Before:

EDWARD E. REARDON, Trial Examiner.

MILLARD D. BROWN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please, sir, state your business connection and address of the same?

A. I am president of the Continental Mills, Incorporated, Philadelphia, Pa.

* * * * (N. T. p. 3)

Q. And you manufacture the fabric out of which the Alpacuna coat is made?

A. Yes, sir.

Q. And you manufacture it for Jacob Siegel Company, which is the respondent in these proceedings?

A. We do.

Q. You also, I believe, manufacture a fabric out of which the Alpacuna topcoat is made.

A. Yes.

Q. Of what fibers are those two coats composed?

A. The Alpacuna topcoat is composed of all animal fiber. The Alpacuna overcoat is composed of all animal fiber and cotton.

Q. Will you please give the separate fiber contents of each coat?

A. The topcoat is composed of Alpaca, mohair, and wool. The overcoat is composed of cotton, Alpaca, mohair, and wool.

* * * (N. T. pp. 4, 5, 6.)

Q. Now, as between Vicuna and Alpaca, what is looked upon, generally speaking, when you generally speak of the better of the two things, which is the better of those two things?

MR. McCracken: I object to that. The witness has already stated that there is no Vicuna in the coat, and therefore any questions as to the term "Vicuna" or the animal Vicuna is irrelevant to the issue.

TRIAL EXAMINER REARDON: There is something in the complaint about misrepresentation concerning Vicuna.

I overrule the objection.

MR. McCracken: I note an exception.

THE WITNESS: You want me to go ahead?

By MR. WILLIAMS:

Q. Yes, sir.

A. Vicuna is an animal that is grown in South America. It is a wild animal, and there is very few of them. Very little enters in commerce. It is one of the finest fibers in quality, finest in feel, and so forth, that is grown in the world.

Q. Why is that true?

A. I don't know. The nature of the animal, I suppose.

Q. What is its habitat?

A. In the Andes Mountains, very high altitude. It's a wild animal.

Q. And the Alpaca, where does it come from?

A. It comes also from Peru. It is a related family to the Vicuna.

• • • • (N. T. p. 7.)

Now, the Alpaca fiber, then, is understood to come from the Alpaca—

A. Animal.

Q. —animal in Peru.

A. That is right.

Q. And when that word is used in connection with fabric it is supposed to be of that animal?

A. At least partly so.

Q. Yes. You mean the fabric is supposed to be partly of that.

A. Yes.

Q. You mean, of course, the fiber itself is the Alpaca.

A. Yes.

Q. Now, how do the Vicuna and the Alpaca rate with reference to ordinary wool, the ordinary wool such as sheep's wool?

A. I don't understand just what you mean by that.

Q. How do they compare with each other in point of excellence?

A. I wouldn't say in point of excellence, because there again it is a question of what you consider excellent. If you take Alpaca and wool, it will wear better and last longer than the Vicuna. Of course, Alpaca will stand up to anything.

• • • • (N. T. pp. 8, 9, 10.)

Q. Well, if you wanted one next to the Vicuna, wouldn't you take Alpaca and Vicuna, the combination?

A. No. It would not be a good combination from the practical standpoint of manufacture.

• • • • (N. T. p. 10.)

Q. Now, where does this word "Alpacuna" come from?

A. Well, I don't know where it comes from. It was a child of Mr. Siegel's and Mr. Appel's brain for advertising purposes.

Q. What would the compound word be derived from, according to your knowledge of wool-bearing animals?

A. I haven't any knowledge of that.

Q. Sir?

A. I haven't any knowledge of what they put in it or what they had in mind when they did it.

Q. What would that convey to you, sir?

A. As a man who handles those fibers, I would naturally think it was a combination of "Alpaca" and "Vicuna".

Q. So the "Alpa" comes from Alpaca and the "cuna" comes from Vicuna.

A. I suppose it does.

Q. Can you imagine where else it would come from?

A. Not with my knowledge of fibers, no.

Q. Now, you say that you manufacture the overcoat and the topcoat fabrics.

A. Yes.

Q. And while they bear the same name, they are composed of different materials?

A. That is right.

Q. Now, are the Alpacuna overcoats always composed of exactly the same fibers?

A. As near as possible.

Q. Well, now, will you explain that?

A. Well, we never substitute fibers in those fabrics, excepting in one shade, and that is the camel hair shade, which is this popular shade, and when we make that fabric we introduce a certain amount of camel hair fleece in there in order to get the right cast to the shade.

Q. About what percentage would you say?

A. It varies from 10 to 20 per cent.

Q. So, as I understand you, sir, one fabric is composed of Alpaca, mohair, and ordinary wool.

A. That is right.

Q. They are the components of one type?

A. Yes.

Q. And in the other type Llama is added.

A. No, not Llama; camel's hair. No Llama is in there.

Q. No Llama at all?

A. No.

Q. Would you explain as best you can the shading of the coats, taking these two types of fabrics?

A. It is impossible to imitate a camel hair shade, or to get a camel hair shade, by dyeing Alpaca, by dyeing wool, or dyeing mohair. We do it as near as we can. We can't hit the correct shade, so we introduce in that as much camel hair fleece as necessary in order to bring that shade up to a camel hair shade. It is not done for economy, because the camel hair fleece costs more than the other ingredients. That is a preferable fiber in many instances.

Q. Would you please give the percentages of the various fibers in these two types of coats, the topcoat and the overcoat?

A. We introduce into the topcoat, when we originally lay the mixing for the yarn, 50 per cent of Alpaca, 20 per cent of mohair, and 30 per cent of wool.

On the overcoat, there is 30 per cent of cotton in the make-up, which is the back of the garment. The face of the overcoat has similar percentages of the various fibers mentioned, the same as the topcoat.

Q. I mean, would you give the percentages for the overcoat?

A. When it is originally put on the machine to make there is 70 per cent of hair and wool content; that is, 70 per cent of that is composed of 50 per cent of Alpaca and 20 per cent of mohair and 30 per cent of wool.

Q. I see.

What about your overcoat?

A. That is what I just said.

Q. I thought you said topcoat.

A. No. I finished that.

Q. I see.

So there is 70 per cent of hair and wool, which is made up of 50 per cent Alpaca and 20 per cent mohair, and 30 per cent wool in the overcoat.

A. Yes.

Q. When did you first start to manufacture this fabric from which the Alpacuna coat is made? Just roughly.

A. I can't tell. It must have been about 10 years ago.

Q. Has the fiber content changed since then?

A. No, it has not.

Q. Will you give the names of the other coats that are made from this fabric besides Alpacuna?

A. We make it only for Jacob Siegel Company. We don't make it for any other company.

Q. I see.

Well, now, do all the coats bear that same name that are made from that fabric?

A. I am not sure at all. I presume they do.

TRIAL EXAMINER REARDON: Are there others who make the fabric the same as you make it?

A. That I can't tell you. There are a lot of imitation fabrics on the market.

TRIAL EXAMINER REARDON: That is, fabric with respect to topcoats and overcoats?

THE WITNESS: Yes.

• • • • (N. T. pp. 14, 15.)

Cross-examination.

By MR. McCracken :

Q. Do you know of any representation that the Alpacuna overcoat is all wool, Mr. Brown?

A. I have never known it to be represented as all wool.

Q. As a matter of fact, the construction is hair and wool on the exterior surface and a cotton backing next to the lining, isn't it?

A. That is correct.

Q. Wasn't that something rather new in the art at the time that you began to manufacture this garment—the cotton backing?

A. In that sort of a fabric, yes.

Q. And what is the purpose, if you know, of the introduction of the cotton backing?

A. There is two purposes: First, it adds strength to the garment; second, you can't get a similar finish to that fabric on an all-wool coat.

Q. It is also lighter, isn't it?

A. It makes it lighter, yes.

Q. And equally warm?

A. Yes.

Q. This Alpacuna overcoat has had a very successful and large sale, hasn't it?

A. Very successful.

Q. And it has many imitators in that respect; that is to say, hair and wool on the exterior surface and a cotton back?

A. Yes.

Q. The name "Alpacuna" was used at the beginning of the manufacture of this garment, to your knowledge, wasn't it?

A. Yes.

Q. It has always been called that?

A. Always.

Q. The name was registered as a trademark?

A. That is right.

Q. Many other names have been since coined, to your knowledge, and registered, applying to coats of this nature: that is to say, an overcoat with a cotton backing and a hair and wool exterior; is that correct?

A. A great many of them, yes.

Q. A great many of them have the suffix "cuna" or "una", just as this has, haven't they?

A. They have.

Q. May I call off a few and ask you, if you are familiar with them?

Are you familiar with the name Anacuna?

MR. WILLIAMS: If your Honor please, I object to this. I do not see the relevancy of it.

MR. McCracken: I am going to lead up, if your Honor please, to this conclusion—

* * * (N. T. p. 17.)

TRIAL EXAMINER REARDON: The objection is overruled. Exemption noted.

MR. McCracken: I am going to ask the witness, therefore—

Your objection is noted to the whole line, I assume.

MR. WILLIAMS: Yes.

By MR. McCracken:

Q. You are familiar with the name Anacuna?

A. Yes.

Q. That is your own registered trade name?

A. We have registered that.

Q. Is that a hair and wool exterior with a cotton back?

A. Cotton back and wool and hair exterior, and it is made for girls' coats.

Q. Yes.

Are you familiar with the name Kuna-pae?

A. Yes.

Q. Hart, Schaffner & Marx?

A. Hart, Schaffner & Marx, correct. Same fabric.

Similar fabric.

Q. How about the name Ma-cuna?

A. That is a registration by Makransky & Sons, Philadelphia.

Q. Same kind of coat?

A. Same kind of coat; cotton back.

Q. How about the name bona-cuna?

A. That is the same kind of coat, made by Pineus Brothers.

Q. How about the name super-cuna?

A. That is another coat. That is made by—I have forgotten.

Q. Sanger Clothing Company?

A. Sanger Clothing Company; that is right.

Q. The same kind of coat?

A. The same kind of coat.

Q. How about the name anglo-cuna?

A. That fabric is made by Worcester Knitting Mills.

Q. Isn't it made by Sanger?

A. Worcester and Sanger both have that registered. Sanger is the clothing manufacturer and Worcester Knitting Mills are the makers of the fabric.

Q. The same kind of garment?

A. Yes.

Q. How about ropa-cuna?

A. I don't know that one.

Q. Do you know Bar-Cuna?

A. I have heard the name, but I don't know much about it.

Q. How about Bry-cuna?

A. I don't know very much about those others. The prominent ones are those on the first page.

Q. Yes.

Have all of those names, to your knowledge, been registered since the name Alpacuna?

A. Yes. There has been a terrific number of registrations of "cunas".

Q. Yes. And, so far as you know, do they all apply to a garment similar to the Alpacuna garment; that is to say, with a cotton back and wool and hair exterior?

A. So far as I know.

Q. You know of none that do not.

A. No, I can't point to any that do not.

Q. Now, of course, you do not know what was in Mr. Siegel's mind when he coined the name Alpacuna, do you?

A. It is impossible to tell that.

Q. The name was just given you to apply to the garment?

A. Yes.

Q. As a matter of fact, Col. Brown, isn't it true that from time to time when you receive a bale of Alpaca hair there is in that bale hairs of the Vicuna animal?

A. There may be.

Q. You have known it to be the case, haven't you?

A. I can't say that I can identify them.

Q. Well, could you identify them if you saw them?

A. I could if I saw them. I don't examine every bale that comes into the plant.

* * * * (N. T. pp. 20, 21.)

Q. The Alpaca is, is it not, an animal which can be domesticated?

A. It is domesticated.

Q. Kept in stockades?

A. That is right.

Q. If I understood you correctly, you told the Examiner a while ago that the Vicuna is a wild animal.

A. That is right.

Q. It can not be domesticated?

A. No, it can not.

* * * * (N. T. p. 21.)

Q. Therefore, the only way in which the hair of those animals could be obtained, I presume, would be by killing the animals?

A. That is the only way we could obtain it.

Q. That being so, the hair of those animals is almost non-existent commercially, isn't it?

A. That is very true. I don't know how much Vicuna, for instance, is obtained down there, but there are laws in Peru against killing the Alpaca because it is so scarce.

Q. You mean the Vicuna?

A. The Vicuna, because it is so scarce, and there are very few that are killed, and there is very little of it that comes to the market, probably two or three thousand pounds a year.

Q. And getting the Vicuna skin is like getting a tiger skin or a polar bear skin, isn't it?

A. Exactly.

Q. Now, which was made first, the overcoat or the topcoat?

A. The overcoat was made first.

Q. For how long a time before the topcoat was made? Do you know?

A. I couldn't say offhand. I suppose four or five years.

Q. Yes.

A. That would be my guess.

Q. And the topcoat was made in a later year, is that it?

A. The topcoat was made in a later year, naturally.

Q. And the topcoat was manufactured under the same name, because that name had become well known in the trade, I presume?

A. That is right.

• • • (N. T. pp. 23, 24.)

Now, I just want to make one thing a little more clear, if I may, Colonel.

In making up this garment, the cotton fabric is definitely on the inner side, the back, isn't it?

A. That is correct.

Q. So that it is not all one mixture of wool and hair and cotton?

A. No, it is not.

Q. It takes the place of the skin of the animal, as it were.

A. Exactly.

Re-direct-examination.

By MR. WILLIAMS:

Q. Colonel, may I ask you if this coat from Vicuna is not one of the most expensive coats on the market?

A. It is because of the fineness of the fiber and the scarcity of the material.

Q. And therefore the Vicuna content of any coat would lend additional value?

A. Oh, no doubt.

TRIAL EXAMINER REARDON: Do I understand that there are coats made only of Vicuna on the market?

THE WITNESS: Claimed to be made only of Vicuna. We had one advertised here in Philadelphia at \$900 retail last year.

By MR. WILLIAMS:

Q. Well, of course, there are different prices, depending, I suppose, on the fiber content per square inch?

A. I don't know.

Q. I saw one for \$750, and I saw one which sold for a couple of hundred.

A. Vicuna is not generally manufactured in the trade. There are only two manufacturers in the United States ever get any of it, and they only make a few yards each year. And naturally I suppose the difference of the make

of the garment and the difference of the mark-up of the retailer has something to do with the question of price.

Q. Yes.

* * * * (N. T. pp. 25, 26.)

TRIAL EXAMINER REARDON: Is there any lining outside the cotton backing?

THE WITNESS: You mean in the Alpaca overcoat?

TRIAL EXAMINER REARDON: I understand the Alpaca, the wool part, has a cotton backing.

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: But inside that cotton backing—the cotton backing is exposed, in other words, or is there a lining over that.

THE WITNESS: When the coat is made they full-line the coat. The full-lined coat is always considered a more luxurious coat under all circumstances.

By MR. WILLIAMS:

Q. You mentioned a number of coats bearing the suffix "cuna" or "una" as part of the name.

A. That is right.

Q. Don't you know that there are other coats of exactly the same construction bearing names no part of which is the part of the word "cuna" or "una"?

A. There is one or two of them.

Q. Only one or two of them?

A. I don't know how many, but I know there is one or two. I don't know every registration down there in Washington.

Q. As a matter of fact, Mr. Siegel himself has different names for his coats, hasn't he?

A. I don't know whether he has or not. I have never been informed of that.

Q. Do you know of Alperu?

A. I have heard of it.

Q. Whose coat is that?

A. I haven't any idea.

Q. I see.

So, then, you are not able to say whether or not every coat of this same construction bears the suffix "cuna" or "una"?

A. No.

Judge Williams, a great many retailers would not sell Mr. Siegel's coat with his trademark on it. Many of them want to put their own name on it.

Q. Yes.

A. I can't testify to how many of those there are.

Q. So, therefore, you would not be led to the conclusion that every coat that did not have "cuna" or "una" on it was not of this construction?

A. Oh, no.

Q. Or anywhere near all of them?

A. That is correct.

* * * * (N. T. p. 28.)

Q. Now, is it or not true that at first there were some types of advertising that indicated that there was Vicuna in the overcoats?

A. I have never seen such an ad. I have seen a lot of their ads, but I have never seen that one.

Q. You don't know anything about that.

Lest there may be some misunderstanding about that remark you made about the killing of the Vicuna, there are a certain number allowed each year.

A. Yes. It is restricted by law.

Q. In other words, they are not restricted absolutely, but they have Government regulation.

A. Under Government regulation; that is correct.

* * * * (N. T. p. 29.)

JACOB SIEGEL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please, sir, state your full name and business connection?

A. Jacob Siegel.

* * * * (N. T. p. 30.)

Q. Now, you are president of the Jacob Siegel Company, are you, sir?

A. Yes, sir.

Q. Located where?

A. 317 North Broad, Philadelphia.

Q. How long have you been in the manufacturing business?

A. I would say about 30 years.

Q. 30 years?

A. Yes.

Q. And what do you manufacture, sir?

A. Where?

Q. What do you manufacture?

A. Topcoats and overcoats.

Q. Do you manufacture the coats that we have been referring to here as Alpacuna?

A. Yes.

Q. Overcoats and topcoats?

A. Yes, sir.

Q. And you, of course, are thoroughly familiar with wool?

A. Not raw wool: just manufactured fabrics.

Q. You are familiar with the wool fabrics?

A. Yes.

Q. What was the derivation of the word "Alpa-

"Alpaca"? What prompted the formation of that coined name?

A. Well, about nine or ten years ago—I don't exactly remember the exact date; I believe it must have been around 1930, the early part of 1930—this fabric was proposed, and in our opinion it was the first fabric introduced of its kind in the men's wear, because we used to have mostly wool fabrics, and this was a new combination of hair fibers. So we were experimenting for a little while and tried to introduce it in the market, making various tests. And after showing it to various customers, they seemed to like the coat. It had a fine luxurious feel. It looked like nothing that was ever shown before in the clothing field. And they were questioning us about durability and wear. We went through the various commercial tests to find out about the wear and the warmth so as to acquaint ourselves to promote that coat, and stated it to the retailers.

After everything was satisfactory we saw great possibilities.

So our sales manager in New York around 1930, the early part of 1930, suggested that we coin a name for this particular coat, since we are practically the first house introducing that coat, that we ought to have this coat distinguished by a trade name. So we started thinking what to call it.

Well, first of all, we thought very few men's coats used Alpaca fiber, and we derived the word from the name "Alpaca".

Then we were sitting around, about three or four of us, in the New York office, and we heard various names, about ten or fifteen names; and some of them were descriptive, and we thought that you couldn't give this name which is descriptive, because you couldn't get registration.

So this sales manager of ours, who commands a very good English—he is very well versed in Latin—after a couple of days he thought of the word "una".

He says, "'Una' in Latin means one."

And he started writing various different names to arrive at the name. Alpacuna, in other words, was Alpaca and "una", so as to pronounce it very easy.

Q. In other words, to make people think there is only one fabric.

A. One manufacturer, that makes the first one, that makes that coat. That was his impression.

As a matter of fact, afterwards he translated it in English: "There is only one Alpacuna." That was our promotion advertising later on,—on top of the coat: "There is only one Alpacuna overcoat". And we had the name registered, and we have been selling the coat right along.

Q. Then, you would have us understand that you did not have in mind Vicuna at all.

A. No.

Q. Even though you had been dealing with wool, and Vicuna was one of the rarest wool?

A. I was not familiar with Vienna at that time, because Vicuna was not familiar in our men's fabrics. I don't know about the women's wear. We never handled the women's fabrics. I didn't know the name until a few years ago. They dug up the names. I didn't know how it looked like.

Q. You say you were trying to avoid descriptive terms, and yet you used "Alpac" from Alpacuna, and on top of that you superimposed "una". Now, wouldn't that mean, according to your own interpretation, one fiber, Alpaca fiber?

A. Well, that is the way it derives the name. We were trying to get—

Q. I say the interpretation of that name that you have given would indicate that that was one fiber, Alpaca.

A. No. He meant the name, just the type of coat, we were the only ones making that type.

Q. Talking of the name itself, and hearing the inter-

pretation you have given of that compound word, coined word, "Alpac" was taken from Alpaca and "una" was taken to be one—una alpaca.

A. When we heard the name we were interested in the pronunciation of the name more so than anything else, and that is how we happened to get the name "una", because you can pronounce it easily, instead of pronouncing "Alpacauna"; we called it "Alpacuna", so as to get a coined word.

Q. Did you coin the name Alperu in the same way?

A. We adopted the name Alperu because Alpaca comes from Peru; so we called it Alperu.

Q. I see. You were familiar with the wools of Peru, then?

A. I was not, but we had information at that time. Our sales manager was at that time questioning about the Alpaca, where it comes from, and—

Q. You want us, Mr. Siegel, to understand that no one in your organization was familiar with Vicuna?

A. I was not familiar with it, and I have been in business for 30 years, and only in the last five years or six years I heard of Vicuna. I was not interested in it. We never used it.

Q. You mean to say that you, the person who was well informed, according to your statement, who was going over the various names of fur and wool-bearing animals, did not even mention Vicuna?

A. I had nothing to do with this advertising.

Q. I say, at the time you sat around the table, this group that was well informed as to wool and fur-bearing animals, that they did not mention the word "Vicuna"?

A. No. I don't think they knew that. They were well informed, well versed in Latin. We were just thinking of a name. And when I asked him, "What's this?" he says, "In Latin it is 'una'. You can pronounce it easily. We will call it "there is only one" translated in English."

Q. I believe you said in your answers that that is not in any way descriptive of the fabric.

A. I beg your pardon?

Q. I thought you said in your answers that the name is not at all descriptive.

A. It is mixed. It comes from Alpaca.

Q. Then, at least a part of it was descriptive?

A. A part of it, yes, because we took it from the name Alpaca.

Q. And that is clearly understood, that you took it from the name Alpaca?

A. Yes. We started with the name Alpaca.

Q. And you understand that the public would understand that it came from Alpaca?

A. Alpaca was descriptive.

Q. You said in your answers that this is in no way descriptive of the fabric.

A. Part of it.

Q. You said not in any way descriptive.

* * * * (N. T. p. 36.)

And you also said in your answers that it is a purely arbitrary name. That is not quite true, is it?

A. I don't know what you mean by "arbitrary".

Q. Well, it is in your answer. I mean, the terminology was used in your answer. I understand it was brought out by counsel, I understand that thoroughly, but it says that it is a purely arbitrary name; in other words, I would gather from that that it was picked out anywhere and not with relation to your business.

A. When you mention the word "Alpaca", we got the idea from Alpaca, but I don't think it is descriptive; it is just a name. When you mention the name in the market to anybody, they don't know what it is. It is just a trade name. They don't know what it is.

* * * * (N. T. p. 37.)

Q. Now, you have two coats which you give the name Alpaeuna to: One is a topcoat and one is an overcoat.

A. Yes.

Q. And the fiber content of those two coats is different; is that correct?

A. No; I would say it is about the same contents, but the topcoat has no cotton back at all,—it is all wool; and the overcoat has got the same contents.

Q. Your topcoat is not lined and your overcoat is lined; is that right?

A. Yes.

Q. Then, wouldn't anybody seeing the backing of your topcoat, which would be wool, naturally come to the conclusion that your overcoat was made of the same fabric, bearing the same name?

A. It has a different appearance in finish, because it is a lighter fabric.

Q. I am talking about the fiber content.

A. I don't know how the consumer would think. I can't say that.

Q. You can't say that?

A. I don't know. It is two different coats entirely in appearance.

Q. But they have the same name.

A. Yes.

Q. Why is it you put on the market two coats of different fabrics and have given them the same name?

A. One is a light-weight topcoat and one is a heavy-weight overcoat. Now, you wouldn't wear a heavy one in the spring and a light one in the winter.

Q. I understand that, but why is it you apply the same name to the two different fabrics?

A. Because they have practically the same blending, with the exception of the heavy-weight, which has a backing.

Q. The 30 per cent cotton.

A. But it is a heavier fabric.

Q. Why do you give these two entirely different fabrics the same name?

A. Because we had so much success with that coat that we wanted to give them a light-weight. They demanded a light-weight coat, so we developed the topcoat. After the overcoat we developed the topcoat.

Q. What I am trying to find out is why you should apply the same name to two coats of different fabric construction. Can you justify that?

A. The other one is a different price entirely. We sell the other coat at a higher price.

Q. I ask you how you justify giving the same name to two coats of entirely different fabric construction.

A. Because it is the same combination of fabrics, and it is accepted by the public.

Q. When did you first manufacture the topcoat?

A. Oh, after we made the cotton back coat.

Q. How long after?

A. Oh, I guess about a year.

Q. About a year.

A. I suppose about a year later.

Q. Why did you use Vienna when you first put the coat on the market?

A. I beg your pardon?

Q. I understand when you first put the Alpacuna coat on the market that Vienna was used in connection with it.

A. Well, if we did, it was not to my knowledge. The advertising man was promoting ads for us, and that must have been some years ago, way back before we knew the contents, and we didn't know even ourselves what Vienna was.

How long ago was that, Mr. Williams?

Q. I don't know exactly. When you first put it on the market.

MR. WEINROTT: Do you have such an ad, Mr. Williams? We couldn't find any.

(Pause.)

By MR. WILLIAMS:

Q. It has been stated that Vicuna was used in connection with the coats when they were first introduced. I am asking why was that done.

MR. WEINROTT: Will you state where? I have not heard it stated in this testimony.

By MR. WILLIAMS:

Q. I am not talking about the testimony, but wasn't Vicuna used in connection with those coats when you first put them on the market?

MR. WEINROTT: He said he doesn't know.

THE WITNESS: I don't know.

* * * (N. T. pp. 41 to 72 inc.)

Cross-examination.

By MR. McCracken:

Q. Mr. Siegel, you are the president of the company, are you not?

A. Yes.

Q. You take general charge of the administration of the company's affairs, and you have certain officials who take charge of certain details, do you not?

A. Yes.

Q. One of those officials is Mr. Bernard Appel?

A. Yes.

Q. Who holds what position?

A. Sales manager and advertising manager.

Q. And he, I presume, comes in contact with the trade to whom you sell your garments?

A. Yes.

Q. You do not undertake that part of the work of the company?

A. No.

Q. This name "Alpacuna", having been registered, has been, according to all of this testimony, widely used, has it not?

A. Yes.

Q. Is it, or is it not your principal trade name now?

A. The main trademark.

Q. You sell more Alpacuna overcoats than any other type of garment that you sell?

A. I sell Alpacuna more than any other coat.

Q. Is the Alpacuna overcoat one of the largest selling overcoats in the United States?

A. We are the largest distributors of that coat—makers of that coat, that kind of fabric.

Q. That kind of fabric, yes.

A. Yes.

Q. And it is one of the largest selling overcoats of any kind in the United States, is it not?

A. Yes.

Q. You spend considerable money on advertising, do you?

A. Hundreds of thousands of dollars.

Q. Over the past ten years?

A. Ten years.

Q. Now, when you speak of the name "Alpacuna", and say there is only one Alpacuna overcoat, I want to ask you this: Does anybody other than yourself manufacture an overcoat under the name of Alpacuna, so far as you know?

A. No. They have similar names, copies.

Q. But no one else uses that name Alpacuna?

A. No.

Q. So when you say there is only one Alpacuna overcoat, you mean nobody but you makes that one.

A. Exactly; yes, sir.

Q. You were asked a question by Judge Williams as to whether or not Alpaca and Vicuna, if mixed together,

would make a very fine fabric. I think you said you did not know anything about the manufacturing of fabrics. Is that correct?

A. That is right.

Q. You do not know, then, do you, whether that would make a good mixture or not?

A. I don't know how it would come out.

Q. You would rely on Col. Brown's testimony?

A. I would rely on Col. Brown's testimony, or textile experts.

Q. Now, you were asked whether or not you ever had a coat returned to you for the reason that it was not an all wool garment, an Alpaca overcoat. I think you said "no".

A. No.

Q. Have you ever stated or advertised that the Alpaca overcoat was an all wool garment?

A. Never.

MR. WILLIAMS: Well, you mean in that language.

MR. McCracken: I am asking him questions. Judge Williams. The man is under cross-examination.

MR. WILLIAMS: I object to that question.

TRIAL EXAMINER REARDON: Objection overruled. Exception noted.

By MR. McCracken:

Q. I show you one of the mats produced by Judge Williams, marked Commission's Exhibit 1-H, and call to your attention an advertisement there prepared for Arnold Constable, which is a very prominent store in New York, is it not?

A. Yes.

Q. And on that advertisement you clearly point out the fact that the garment is manufactured of blended rare

animal hair fibers and fine virgin wool with a fine, long, staple cotton backing.

A. That is correct.

Q. That is a common type of your advertising, is it not?

A. Yes.

Q. There is nothing in that to the effect that it is an all wool garment, is there?

A. No. We never mention that.

Q. And that is a definite statement that it is not an all wool garment.

A. It is not an all wool garment.

Q. Now, why did you put the cotton back on, Mr. Siegel, as a matter of information?

A. Well, there is a long story, if you want to hear it.

Q. Well, I think we ought to know of it, because one of the bases of this complaint is an assertion that this garment is not as represented. It appears in the advertising to have a cotton backing, and that is a feature of the overcoat.

I would like to have you explain as briefly as you can why this overcoat was manufactured with a cotton backing. First of all, was this a new invention in the trade?

A. In the men's coats we were the first ones.

Q. The hair and wool exterior with a cotton backing?

A. Yes.

Q. Now, tell us about the cotton backing.

A. Well, we conceived that idea because we had fabrics—I don't know if you gentlemen remember about 12 years ago they had this fabric made of camel hair with a cotton back, and it looked like a fur, and the back was cotton.

I believe you have a swatch right there, Judge Williams. I just detected it. It will give you an idea.

Q. Go on.

A. And that went over, and it was an expensive fabric.

We wanted to produce a coat, something for the popular trade, if we could give them something at a price that the majority of the people could afford wearing that coat, and give them durability.

I then consulted our textile expert, Mr. Sol Weinberg, and told him what I had in mind. And Mr. Sol Weinberg—

MR. WILLIAMS: I object to this line of testimony, if you please. I object to this line of testimony, because I don't think it is material as to why he did it.

TRIAL EXAMINER REARDON: It is cross-examination. Overruled.

By MR. McCracken:

Q. Go ahead, Mr. Siegel.

MR. WILLIAMS: If your Honor please, I did not ask him why he made that type of garment at all. Counsel is going now into why that type was made. I just analyzed what type it was.

TRIAL EXAMINER REARDON: Well, something was brought out about that on your direct.

MR. WILLIAMS: I except.

TRIAL EXAMINER REARDON: Yes.

By MR. McCracken:

Q. Now, you consulted your textile expert—

A. I consulted our textile expert, Mr. Sol Weinberg, and he then suggested to me that I contact the mill who is able to make it, through his formula, and that is how I got acquainted with the Continental Mills, through Mr. Sol Weinberg.

After a certain length of experimentation—it took six

or seven months, or a year, to get it down to perfection—after experimenting we got it down to perfection, and after that, of course, we realized we got something that is outstanding and acceptable by the public, and we proceeded on the line of registering the name exclusive with us.

Q. You have told us about registering the name very clearly, Mr. Siegel.

A. And that is how we happened to promote this fabric.

Q. Now, the particular feature of the cotton backing with this external surface is what?

A. It is more like—it is a copy of an animal, fur bearing animal's skin. you know,—skin at the bottom and fur at the top,—and the way Mr. Weinberg outlined to me, that he conceived the idea, is to keep the nearest thing to a nature coating; and that is why he had to use a cotton backing.

Q. Is it warmer than all wool backing?

A. We tested that, and it is much warmer, lighter.

Q. Warmer for the same weight?

A. Lighter in weight and warmer.

Q. And is it more or less durable?

A. It is more durable.

Q. More durable?

A. Yes.

Q. Is there any attempt in the garment itself to conceal the cotton backing?

A. No.

Q. The coat, I presume, is lined with silk or satin?

A. We used to line it with silk, and then afterwards when Celanese perfected their product—and it wears better; it wears better than silk—we changed from silk to Celanese.

Q. You also line the topcoat, do you not?

A. Yes, but only quarter line it.

Q. Which does not have a cotton backing?

A. Yes.

Q. And that is because people prefer a light topcoat?

A. That is right. Nobody buys a topcoat full lined. They want it quarter lined.

MR. McCracken: I think that is all.

* * * * (N. T. pp. 79, 80.)

ALFRED D. EGENDORF, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your full name and business connection?

A. Alfred D. Egendorf; director, Merchandise Research, Lit Brothers, Philadelphia.

TRIAL EXAMINER REARDON: You are here in response to a subpoena.

THE WITNESS: That is right.

By MR. WILLIAMS:

Q. What is your particular position with that company?

A. Basically it is one of public relations.

Q. Are you familiar with the Alpacuna overcoat?

A. I am.

Q. What contacts have you had with that overcoat?

A. Well, the name is well known; friends of mine have them, and we have the coat mentioned here under the name of Alperu carried in the store.

Q. I see.

How long have you been in that business?

A. Department stores?

Q. Yes.

A. Something over six years.

Q. And how long have you been in this public relations work?

A. Four.

Q. And that brings you in contact with the general public?

A. It does.

Q. All sorts of complaints come to you.

And are you pretty familiar with the public's reaction to advertisements and labels and things of that sort?

A. I am active in consumer work, if that answers your question.

TRIAL EXAMINER REARDON: Read the answer.

(Answer read.)

TRIAL EXAMINER REARDON: With that store?

THE WITNESS: No; nationally.

By MR. WILLIAMS:

Q. Are you connected with any association of that type?

A. Well, I serve on the labeling committee of the Consumer Retail Council; that is, the national affiliation.

Q. Mr. Egendorf, will you look at this advertisement in the paper, which has been marked Commission's Exhibit 3, of Maurice L. Rothchild, Chicago, and look over that, will you?

TRIAL EXAMINER REARDON: What ad are you referring to?

MR. WILLIAMS: 3-C.

TRIAL EXAMINER REARDON: 3-C?

MR. WILLIAMS: Yes, sir.

TRIAL EXAMINER REARDON: I want to be sure.

By MR. WILLIAMS:

Q. (Indicating). The top and the other things.

A. All right.

Q. What would be your impression from that advertisement as to the fiber content of the coat in question?

MR. McCracken: Just a minute.

I object.

The advertisement speaks for itself, in the first place; and, in the second place, this man is now being asked to give an impression which is to interpret the impression of the general public.

TRIAL EXAMINER REARDON: Off the record.

(Discussion off the record.)

TRIAL EXAMINER REARDON: The objection will be overruled for the present. Exception noted.

By MR. WILLIAMS:

Q. Mr. Egendorf, aside from occupying somewhat of an expert capacity, you naturally buy overcoats and clothes, do you?

A. I do:

Q. Do you always buy them from your own concern?

A. No, sir.

Q. You buy your coats and suits that suit your ideas?

A. That is right.

Q. And as such you may be a potential purchaser of this coat?

A. That is true.

Q. Well, as such potential customer of Rothchild, what would you gather from that advertisement?

TRIAL EXAMINER REARDON: Commission's Exhibit

MR. McCracken: It is understood the objection runs to the whole line of testimony.

TRIAL EXAMINER REARDON: It is.

MR. McCracken: I do not want to object to each question.

MR. WILLIAMS: If your Honor please, don't you think this is a little different?

MR. McCracken: All right; then, I object specifically, for the same reasons.

TRIAL EXAMINER REARDON: I make the same ruling in all respects.

By MR. WILLIAMS:

Q. All right, sir.

A. I have to put aside what I know.

Q. Yes.

A. And reading this ad as some one who does not know, I would infer that this coat is made of Alpaca. According to this, "Alpacuna is woven from the hair of the Alpaca". And in lieu of any further—

TRIAL EXAMINER REARDON: Is that all it says it is made from?

THE WITNESS: That is all it says up here: "Alpacuna is woven from the hair of the Alpaca, which lives in the Andes Mountains, where the temperature is apt to change in a single day from 100 degrees at noon to below freezing at night".

TRIAL EXAMINER REARDON: Well, not knowing anything about it, you could not come to any other conclusion, could you?

THE WITNESS: That is why I started by saying "not knowing what I do know".

By MR. WILLIAMS:

Q. Now, the word "Alpacuna" as applied to that coat, if you were to divorce your business information on that, and as a member of the public, as a potential customer, what would you think of that?

A. From what I gathered, the public examining the word at the top, "Alpacuna", I feel would be very, very small. "Alpaca" would be the most logical one for them to recognize.

Q. Would that give you the impression of being an all wool overcoat or partly something else?

A. In view of the statement at the top, I would be led to believe it was an all wool overcoat.

Q. Is there anything in that advertisement, as a member of the public, that would make you feel that that was not composed entirely of wool?

A. No, I can't say that there is.

Q. Take the words at the bottom, where they speak of the quality of the coat, warmth, wear, and so on, would that tend to indicate that there is some cotton in it, or all wool?

A. Well, from the general line of reasoning from a consumer's standpoint, when they see "It is 26 per cent warmer", at least the average consumer associates the warmth with wool. I mean, that is my impression as an individual.

Q. How have you come in contact with the Alpacuna coat?

A. Well, of course, I have known it because of its wide customer acceptance, and from the fact that we carry in the store the coat under the name Alperu, which I understand is the same garment.

Q. Does anybody mention that name who comes into your store to buy goods?

A. Oh, I believe they do.

Q. I mean, does any customer come in and mention it?

A. To me?

Q. To you.

A. I have only had association, direct contact, with one customer. It so happened it was an Alperu coat.

Q. I am talking about Alpacuna.

A. I couldn't answer that question, not being on the clothing floor. They naturally would not come to me and ask for that garment.

Q. I see. It is only when a complaint is made that you come in contact with it?

A. That is right.

Q. Now, suppose we take the ad on Commission's Exhibit 2, marked ad No. 105. Read that one and see what that would indicate to you as to fiber content, in either of your capacities, as official of the company or as a member of the public.

A. Well, this is substantially the same as the other, except there is a bit more dissertation on the habits of the Alpaca animal.

Q. Well, this one has on it—

A. It also has a picture of the same sort of animal—any of the South American fur bearing animals, I imagine, although tied in with the advertising it might be Alpaca, because they speak of the Alpaca living in the Andes Mountains. I assume it is a picture of the Alpaca, although I have never seen an Alpaca.

Q. At any rate, from any circumstance you would understand, as I understand you, that this would be some wool bearing animal?

A. Well, it has a fleece. That much I can see.

Q. Yes.

Is here anything from that ad which would indicate to you that the coat was composed of any material other than wool?

A. No, nothing in the ad.

Q. Then, in this enlightened age, when we have our schools teaching children physical geography, and what

not, don't you think there would be a number of people who would know about the Vicuna and the Llama and the Alpaca?

A. The Alpaca, I am fairly certain, there will be a certain number. As to the Vicuna, probably a smaller number, but probably some.

Q. Yes.

Well, of course, anybody being familiar—that is, generally familiar, not in great detail—with the Vicuna, would such a person be apt to misconstrue that?

A. One familiar with fur bearing animals might pick from the name the combination Alpaca and Vicuna.

Q. What would the formation of that name indicate to you, as an ordinary citizen, if you saw that name in a store?

A. I am afraid I would not recognize much more than Alpaca, especially since it is the only word stated in the advertisement.

Q. Why would this "una" be on there?

A. Well, of course, to that I know the answer. But I mean the average customer reading this ad—I am talking only from my own experience—would probably believe that this coat was made entirely of Alpaca, because down here (indicating) it says "Alpacuna overcoats come from Alpaca hairs", and I don't think that would lead them to believe there was any other fiber in there at all.

Q. But in any circumstance those ads that I have shown you would indicate—

TRIAL EXAMINER REARDON: "Those ads" does not mean anything. Identify them.

MR. WILLIAMS: There were two.

TRIAL EXAMINER REARDON: Have you both of them in the record?

MR. WILLIAMS: Commission's Exhibit 2 was the first.

MR. WILLIAMS: Will you read my last question?

(Question read.)

By MR. WILLIAMS:

Q. (continuing)—would indicate that the overcoat was composed wholly of wool of some kind?

A. Yes.

Q. I show you another ad, ad number 103, The Union, Columbus, Ohio, found on Commission's Exhibit No. 2, and ask you to look it over and see what you think that coat is composed of, from the advertisement. What would you understand the construction of that coat to be?

A. Well, this ad states the construction of the coat.

Q. I mean, it states "Guanaco" here, for instance? (indicating).

A. It says: "Alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guanaco, and Texas Sheep".

Q. Well, would you understand that Guanaco element there to be more than an accidental amount, as a member of the public?

A. As a member of the public I probably would; and, technically, I would assume it was over two per cent.

Q. And definitely known to be such?

A. Yes; ascertainable.

Q. And if you saw on here "from the plains of Turkestan we took the sturdy, durable hairs of the Angora", would you understand that to be the Texas Angora?

A. No. It says, "From the plains of Turkestan". We have to assume it came from Turkey, or Turkestan, wherever they are supposed to come from.

Q. Well, as a member of this firm, and as a person well informed, would there be any other construction, from reading that?

A. No.

Q. In other words, there is no secondary meaning, so far as you know?

A. I can't see it, sir.

Q. Now, I notice that the heading of the ad 104 on the same exhibit, Commission's Exhibit 2, this headline (indicating), "there is only one Alpacuna coat".

Are you in a position to say what the customer reaction would be to that, as to coats being named something else, of exactly the same fabric?

A. My opinion would be to that particular statement, "there is only one Alpacuna"—that would be something like saying, "There is only one Cadillac", or "There is only one LaSalle." That would be my personal opinion.

Q. Yes.

A. That there is only one article known by that name.

Q. And only one exactly like that?

A. By "exactly" you mean exactly named?

Q. One which you would call a facsimile of that.

A. I would limit it to the designation; that is, there is only one thing known by that name.

Q. Well, would you understand by that that there was—

A. May I clarify that?

Q. Yes.

A. In Col. Brown's testimony before there was specified the two animals which were similar. One was wild and one was tame.

Q. Yes.

A. The Guanaco and the Vicuna. I mean, I would assume there would be only one Alpacuna.

Q. I mean the material. Would you expect another coat, purchased under another name, to be of exactly the same material in all respects, cut from the same body, perhaps?

A. No; I would assume another Alpacuna coat.

Q. I mean the Alpacuna coat is of the same construction in all particulars but under a different name.

A. As soon as it goes under a different name I don't consider it the same.

Q. Would you expect to find on the street a coat of exactly the same construction if you bought one entitled "There is only one Alpacuna"?

A. The average customer probably would not.

Q. He would not expect to meet another coat on the street that would look exactly like his?

A. Probably not.

TRIAL EXAMINER REARDON: What does that mean? That there was sold the one coat and that it was not sold to anybody else?

THE WITNESS: I was clarifying it by specifying that the name of the coat--

MR. WILLIAMS: I was speaking generically, not specifically.

MR. McCracken: You know that there are hundreds of thousands of them made exactly alike all known as Alpacuna. Nobody disputes that.

THE WITNESS: I think the question—going back to the automobile, he would not expect a Ford instead of a Pontiac when he sold a Ford.

By MR. WILLIAMS:

Q. And he would not expect to get two Cadillac cars, one under the name Cadillac and one under the name Pontiac.

A. No.

Q. Nobody else would.

Now, as to the preference as between Vicuna wool in the Alpacuna combination, as against ordinary wool, what—

A. Speaking as a consumer, I don't think it would make any difference. I mean there would be no consumer preference, in that price range, which covers the majority of the consuming public, with which I am familiar, because, as I understand Vicuna, it is relegated to the

select few, and it is not something that the majority can be concerned with or understand.

Q. Well, there are lots of people who understand it.

A. I mean people who can afford to buy that.

Q. But aren't there people with general information, people who are informed on various subjects?

A. That is true.

Q. And there are many people informed of Alpacuna who would not buy the coat?

A. I assume there are.

Q. And there are certain or many people who would know what that compound word meant, aren't there?

A. That I grant you. There would be some people who would know.

Q. And there would be a great many, in this enlightened age?

A. Probably more than there were previously.

Q. And if they knew what Alpaca wool is, they would have a preference for that over ordinary wool.

A. From my own point of view, taking me as an expert, maybe not; I personally would not.

Q. I mean the general public.

A. I would rather not answer.

Q. You would rather not answer as to the general public's understanding about that?

A. No.

Q. All right.

MR. WILLIAMS: That is all. The witness is with you.

MR. McCracken: Now, if the Court please, I move to strike out all of that part of the witness' testimony which purports to present an interpretation of the language or drawings in the advertisements which speak for themselves.

TRIAL EXAMINER REARDON: Motion granted, with exception to Commission's counsel.

MR. McCracken: Now, there are a few other questions that Judge Williams asked that did not have to do with the interpretation of these exhibits, and I would like to ask him a question or two.

Cross-examination.

By Mr. McCracken:

Q. Mr. Egendorf, you are familiar, of course, with the name "Alpacuna" as applied to the overcoats manufactured by Jacob Siegel Company?

A. I am, sir.

Q. There are no overcoats called "Alpacuna", that you know of, except those manufactured by the Jacob Siegel Company?

A. That is true.

Q. And in that respect there is only one Alpacuna, isn't there; that is to say, the one manufactured by the Jacob Siegel Company?

A. Yes.

Q. In the trade is it known generally of what materials the fabric in the Alpacuna overcoat is made?

A. I believe that is so.

Q. And what would be the trade's knowledge of that, based upon your knowledge?

A. That it is a wool face fabric with a cotton back, in the overcoat.

Q. In the overcoat, yes. That is a well known fact, is it not?

A. Yes.

Q. The Alperu, which Lit Brothers sell, is or is not that similar?

A. I am led to believe it is exactly the same.

Q. It is simply another trade name for the same garment?

A. Yes.

Q. And there is only one Alperu, and that is the garment manufactured by the Jacob Siegel Company?

A. That is true.

Q. Is that overcoat ever warranted, so far as you know, in your shop or anywhere else to be an all wool overcoat?

A. I would definitely say that I would be opposed to that. As far as I know, there is no one in our store that would undertake to sell it as an all wool coat.

Q. It is not an all wool coat?

A. No.

Q. And it has a cotton backing for certain specific reasons, has it not?

A. That is right.

Q. Which have been described a while ago.

A. That is true.

Q. Does that overcoat sell generally for the same price as it is advertised?

A. It has a maintained price.

Q. It is a good seller?

A. In the bracket in which it sells it is a very good seller.

Q. There are lots of all wool coats that sell for less money than that, aren't there?

A. All the way down the scale.

MR. McCracken: I think that is all, sir.

Re-direct-examination.

By MR. WILLIAMS:

Q. In selling various coats in your store having cotton backs, is the fact that they have cotton backs generally made known in the advertisements?

A. Up until several months ago I used to check all advertisements, and in our fiber identification we used to designate.

To cite you an example which covers what you mean: The case of the women's velvet dresses made of rayon and pile cotton backings. The cotton there is for the

same reason. Or, pile cotton back fabric—that has been advertised that way, and I think it is a general practice. Of course, under the rayon rules it is mandatory.

Q. Do you know of concerns that manufacture woolen coats, and when they come out under any nomenclature that might indicate that they are wool, that they are all wool?

A. Well, I think these people—who, of course, in connection with the previous wool labeling, would ~~hardly~~ label wool a hundred per cent wool unless it was a hundred per cent wool.

Of course, we accept it on the manufacturer's representations, unless we have conducted our own tests, that we do on some of the merchandise.

Q. If there is any question, you make tests to find out whether or not it is all wool?

A. We have.

Q. And that applies generally to all of the stores that sell all wool coats as such?

A. The misrepresentations come about in the labeling of the coat.

Q. Is there any effort made to go back to see what the factory examination shows?

A. Probably, if there is any reasonable doubt, or by the fact that the garment is being sold below which it would be impossible to produce the garment.

Q. But your store people are generally familiar enough with the materials to know whether or not there is something else in it?

A. No, I wouldn't say that is true. I wouldn't say the average buyer can tell by looking at a piece of merchandise what is in it, especially today in the era of synthetics.

Q. When you people sell your coats as all wool coats, they are all wool coats?

A. To my knowledge, they are all wool.

Q. And when you use any name to indicate that they are wool coats, are they wool coats?

Alfred D. Egendorf—Re-cross—
Roy E. Clark—Direct.

A. If we use that word "wool", yes.

Q. Or if you use some other word that would indicate wool content, how about that?

A. Well, we would never sell a worsted that was not a worsted.

Q. That is wool?

A. Yes.

MR. WILLIAMS: All right, sir.

Re-cross-examination.

By MR. McCracken:

Q. When you buy an Alperu overcoat from the Siegel Company there is no indication or warranty by the Siegel Company that it is an all wool garment?

A. Not so far as I know.

Q. You know perfectly well it is not.

A. We buy it knowingly.

MR. McCracken: All right.

ROY E. CLARK, was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Mr. Clark, will you please state your name and business connection?

A. Roy E. Clark, publicity director, Strawbridge & Clothier, Philadelphia.

Q. Will you state further about your connection, just what it is, as to its operation?

A. Well, in charge of all the publicity operations of the department store of Strawbridge & Clothier.

Q. Which means that you are generally familiar with advertising, and the ordinary interpretation of advertising, and advertisements, and so on?

A. Yes, sir.

Q. Are you acquainted with the word "Alpacuna"?

A. Not directly. We don't sell the merchandise. I know it as a general trade name.

Q. Yes.

When that word would be used alone in an advertisement, that is, without any further elucidation as to the fibre content of the garment, what would that word indicate to you as to the fibre content?

MR. McCracken: Just a moment, Mr. Clark.

Objected to, for the reasons stated with respect to the last witness.

TRIAL EXAMINER REARDON: Same ruling.

By MR. WILLIAMS:

Q. I call your attention to Commission's Exhibit No. 2, particularly Ad No. 104—there appears to be no fibre identification—and ask you in that connection what that word would mean to you as to fibre content.

A. Well, I think perhaps to me, familiar as I might be more than the general public, that that would infer that there was at least a content of Alpaca and Vicuna.

Q. Would there be any indication of anything else being in it, from that advertisement?

A. I don't think so, from that advertisement.

Q. Even from your personal knowledge about it, nothing further being stated than that—you do not know about the coat itself?

A. I do not know anything about the coat itself.

Q. So if Mr. Clark, as Mr. Clark, and not as publicity director of Strawbridge & Clothier, would go to a store, and after having seen that ad he would expect to get a coat with some Alpaca and some Vicuna?

A. And I think I would expect to get some, not the entire content.

Q. But you would expect to get a substantial amount, would you not?

A. I should think there would be some of the content in there.

Q. Would you say substantial or insubstantial, for advertising purposes?

A. Probably substantial.

Q. And if you went there, after seeing this headline: "There is only one Alpacuna Coat"—

A. I see absolutely no objection to that. It is a legitimate advertising phrase.

Q. I did not ask you that. The question is:

Would you expect to meet that same coat under the same label on the street?

A. Yes, sir.

Q. You would?

A. Yes. I think it is an entirely legitimate advertising phrase, and it would be considered to mean that there is only one kind.

Q. There is only one coat manufactured and sold by the company?

A. There is more than one coat.

Q. Of course, Mr. Clark, I was speaking generically. I mean a coat of that type. I did not mean literally physically one coat. I must apologize for my lack of perspicuity in putting the question.

In other words, would you expect to find the same kind of coats under a totally different name? Would you expect to meet a coat on the street that is exactly the same thing when you had bought a coat labeled "There is only one Alpacuna"?

A. I would think there might be a comparable coat.

Q. I mean a coat of the same cloth or the same fabric.

A. I see no objection to the statement.

Q. I ask you, would you expect actually, as a man of experience, to find another coat, the same coat exactly?

When I say "the same coat" I mean exactly the same cloth, although under another name.

A. I wouldn't be surprised if I did.

Q. You would not be surprised?

A. No, sir.

Q. You would not expect it, though, would you?

A. I wouldn't be surprised.

Q. But you would not expect it?

A. I wouldn't be surprised.

Q. Is that because of the practice today, or because it is a fair thing of the person who bought that coat?

A. From both standpoints I think it is an entirely legitimate trade name.

Q. I am not asking you that. I am asking you, do you believe that any person on the street who bought that coat as an Alpacuna coat would expect to meet a similar coat under some other name?

A. I wouldn't be surprised.

Q. You would not be surprised?

A. No, sir.

Q. Do you know anything about the Vicuna animal?

A. I never saw one, sir.

Q. I know that, but—

A. The more informed person has in mind that it comes from South America, the Andes Mountains, Bolivia, Peru.

Q. And that it is a wool-bearing animal?

A. It has a fleece.

Q. What reputation has it for fineness of its fleece?

A. Its fleece is used in commerce.

Q. It has a reputation for being the finest fleece?

A. Yes, sir.

Q. One of the finest?

A. Yes, sir.

Q. In fact, the finest?

A. It is one of the best.

Q. And you know of Alpaca, of course.

A. Yes.

Q. I don't mean that you have been down there and have seen it, but in the ordinary sense of the term.

Now, a coat having a blend of Vicuna and Alpaca, what standing would it have as against ordinary wool?

A. I should think it would be desirable.

Q. Desirable.

Well, would it be preferred over some old, ordinary wool coat?

A. I think it might be.

Q. Would that combination be preferable to ordinary wool?

A. I don't know if it would influence me to buy one, sir. I think it is a desirable trade name, and I think it is better than some very fine wool?

Q. I mean the composition of the coat.

A. I think it would make it into a desirable material for coats.

Q. Well, would you say the Vicuna coat would be much preferable to an ordinary wool coat?

A. If I wanted a luxurious one, of soft texture; yes, sir.

Q. That is what I mean. It is looked upon as a coat of a better quality than ordinary wool.

A. Vicuna is.

Q. And that applies to Alpaca.

A. I am not so familiar with that.

MR. WILLIAMS: All right, sir.

MR. McCracken: I move to strike that part of the witness' testimony which purports to interpret the meaning of the advertisement to which attention was directed by counsel to the witness.

TRIAL EXAMINER REARDON: Motion granted. Exception allowed.

By MR. WILLIAMS:

Q. As I understand it, the people at Strawbridge & Clothier are not obliged to buy there?

A. They better.

Q. I mean obliged to.

A. Most of them do.

Q. Most of them do?

A. If for no other reason than that they get a discount.

Q. Of course, that applies to clothes as well as anything else?

A. Yes, sir.

Cross-examination.

By MR. McCracken:

Q. Mr. Clark, when a statement is made that there is only one Alpacuna overcoat, it means, does it not, that there is only one garment bearing that name, and that is the garment manufactured by Jacob Siegel Company, the makers of the Alpacuna overcoat?

A. I wouldn't know who was the maker of it, but the first part of it I think is correct.

Q. You said with your personal knowledge of these animals you might have interpreted this word as including a reference to Vicuna. Did you ever see a Vicuna overcoat?

A. Well, I think we had one. I think we had a very high-priced one down there, several hundred dollars, last year.

Q. With all your experience with Strawbridge & Clothier, you have only seen one?

A. Yes, sir.

Q. In other words, it is extremely rare?

A. Yes, sir.

Q. Running up to seven or eight hundred dollars. Don't they run up to seven or eight or nine hundred dollars?

A. That is my understanding. I think the one we had was \$600, or more.

Q. Yes.

And it is a fact, is it not, that no one who was paying \$40 for an overcoat would expect to get much Vicuna in that overcoat?

A. I don't think they would expect to get much. It is in my mind that they would expect to get a little.

Q. If they were told there is Vicuna in the overcoat?

A. Yes.

Q. Now, the reason that you suggest that this word "Alpacuna" may imply a combination of Alpaca and Vicuna is because of the suffix "una" the first part of the word being, "A-l-p-a-c", isn't it?

A. Yes.

Q. Now, the suffix "una" is the only indication you can find of the "Vicuna" part of the word, isn't it?

MR. WILLIAMS: I don't think that is correct. The suffix—

TRIAL EXAMINER REARDON: Well, let us get by that discussion. You can each maintain something else.

By MR. McCracken:

Q. I am going to ask you about a few more words with "cuna" in them and what they convey to your mind.

Do you know the word "Anacuna"?

A. I am not familiar with that.

Q. Do you know the word "Kuna-pac"?

A. No, sir.

Q. That is Hart, Schaffner & Marx.

A. No.

Q. Do you know of "Macuna", made by Makransky & Sons, in Philadelphia?

A. No.

Q. Do you know "super-cuna"?

A. No, sir.

Q. Do you know "bona-cuna"?

A. No, sir.

Q. Do you know the word "Anglo-cuna"?

A. No, sir.

Q. Would any of those names, or all of them, convey to your mind the thought that there was Vicuna in the garment necessarily?

A. I think perhaps it would. I think perhaps it would.

Q. Although the other portion of the word refers to no other animal, as, for example, "Macuna", which unquestionably comes from the word "Makransky", the name of the manufacturer?

A. The difficulty in answering that question is that certain points are fresh in your mind which maybe you heard in the morning and might influence your thinking.

Q. Of course it would.

A. I am not familiar in the trade with the name under discussion here this morning. I was merely trying to answer your question from what is in my mind. If you walked up and asked me, I wouldn't know.

Q. Now, from your knowledge of the Alpacuna garment, would you be under the impression that it had any Vicuna in it, from your own knowledge of it?

A. I would; yes, sir. I think I would infer there was some Vicuna content.

Q. Is it known throughout the trade as a trademark? Do you know with regard to that?

A. I can't answer that.

Q. Do you know what the fabric is, from personal knowledge?

A. I have never seen a test of it. It has been described as a mixture of wool, I think Alpaca, and perhaps a cotton back. I don't see any weakness in the cotton back.

Q. You sell cotton-backed overcoats down there, don't you?

A. Yes, sir

Q. And they have certain advantages, haven't they?

A. Yes, sir.

Q. Lightness?

A. Lightness.

Q. Warmth?

A. I don't know so much about warmth.

J. M. KELLEY was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your full name.

A. J. M. Kelley.

Q. And what is your business connection?

A. Salesman, clothing generally, John Wanamaker, Philadelphia.

Q. How long have you been in such business?

A. Eleven years.

Q. You are fairly familiar with clothing fabric, I presume?

A. To a certain extent, yes.

Q. Well, are you familiar with the word "Alpaca-na"?

A. I am familiar with it; yes, sir.

Q. You are familiar with that word?

A. Yes, sir.

Q. How familiar with it are you?

A. Only through advertising and certain customer comments.

Q. Well, what—from advertisements, you say?

A. Yes.

Q. From those advertisements that you have seen.

what is your understanding as to the fibre content of that coat?

MR. McCracken: Objected to, for the reasons already stated.

TRIAL EXAMINER REARDON: I think his answer should be based on a specific advertisement. He can't be cross-examined on advertising that is not before us.

By Mr. Williams:

Q. Well, do you recall what sort of advertising you have seen?

TRIAL EXAMINER REARDON: Well, that would not be firsthand evidence. The advertising itself would be the best evidence.

MR. WILLIAMS: I feel the man is entitled to express his opinion from what he has read.

TRIAL EXAMINER REARDON: Well, you ask the questions and I will proceed.

MR. WILLIAMS: I take an exception.

By Mr. Williams:

Q. You say you have read advertisements concerning this Alpacuna coat?

A. Yes, I have.

Q. What impression did you form from those advertisements as to the fibre content of that coat?

MR. McCracken: Objected to, for the reasons stated.

TRIAL EXAMINER REARDON: Objection sustained.

MR. WILLIAMS: Exception.

By MR. WILLIAMS:

Q. You are a potential customer for a coat of this kind, even though you are with another concern?

A. You mean will I consider buying it?

Q. Not consider, but are you a potential customer for overcoats, even though you work for the Wanamaker Company?

A. Yes, I am.

Q. A general customer. I don't mean from Wanamaker, but a general customer.

A. Yes.

Q. Would you read that ad, please, or look over it, and see what, as a potential customer, would you gather from it as to the fibre content.

MR. WEINROTT: Now, will you identify what you show him?

MR. WILLIAMS: 3-C.

MR. McCracken: Of course, I am going to make the same objection.

TRIAL EXAMINER REARDON: Same ruling.

By MR. WILLIAMS:

Q. Mr. Kelley, what impression would you get, as a potential customer, as to the fibre content?

A. Well, not knowing anything about it at all, that is, assuming I am not familiar with anything about it, this statement right here would imply that it was woven from the Alpaca, but it indicates that it would be combined with some kind of Vienna content, which, possibly because of the price, I would interpret it as being a very minute quantity of Vienna.

Q. When you say "minute" do you mean infinitesimal, in the sense of half of one percent, or something more substantial?

A. I think my impression is that it contains just

enough Vicuna in it so that they could use the name "Alpacuna". That has always been my interpretation.

Q. Then, relatively speaking, it is supposed to be a substantial amount. Is that what you understand?

MR. McCracken: That is not what he said.

A. A substantial amount would mean that they would have to use Vicuna in conjunction with it.

By MR. WILLIAMS:

Q. If it was not a substantial amount, they would not use it?

A. It depends on what would be required to use the name "Alpacuna". Whether it would be a substantial amount or not, I don't know.

Q. I see.

But, at any rate, as I understand it, you would expect to find a calculable amount of Vicuna; is that right?

A. I should think there would be some Vicuna in the coat; yes, sir.

Q. Suppose you read the ad marked Ad No. 204 on 3-D, Commission's Exhibit 3-D (handing the exhibit to the witness).

A. Yes, sir.

Q. What would be your conclusion from that advertisement?

A. Well, if I had seen this ad for the first time, never seeing another ad of Alpacuna before, this has very little explanation of what Alpacuna is; and if I were looking at this ad for the first time, I would probably get the impression that I always had, that Alpacuna contained Vicuna and Alpaca.

Q. Not having reported the figures as on the other ads, would that change your idea as to the Vicuna content?

A. Well, speaking for myself, I just did have a little knowledge of Vicuna; that is the reason I did not imply

when I saw the name that it was a combination with Vicuna in it.

Q. Yes.

And if a label were on the coat, such as is found in the advertisement No. 103 on Commission's Exhibit 1-D, attached to the coat, would that in any way change your idea as to the wool content?

A. No, I would not be able to identify that animal.

Q. Would there be any question in your mind that the garment was an all-wool garment?

A. I would not question that it was an all-wool garment, no.

Q. In other words, you would expect it to be an all-wool garment?

A. I would expect it to be, yes.

Q. Suppose you saw an ad which said, "There is only one Alpacuna coat", such as ad No. 106, Commission's Exhibit 1-E, like that (indicating), would you expect to find another coat of exactly the same fabric in all particulars except the change in the name meeting you on the street?

A. Well, "There is only one Alpacuna Coat" implies to me it has some peculiar characteristic that makes it an Alpacuna coat, and certainly I would not expect to find it in something that was not an Alpacuna coat.

Q. In other words, you would not expect to find the same thing under another name on the street in the same town?

A. No, not after seeing this statement.

Q. Yes.

Do you know whether or not there is a preference for Vicuna over other wools?

A. Well, we have had Vicuna overcoats in our own stock, and I know that they are very luxurious. Their only appeal would be their fineness, their softness.

Q. Take a combination of Vicuna and Alpaca, as against ordinary wool, which would have a preference.

A. For luxurious feel, certainly it would be a better

combination, but for its wearing qualities, it would not be so good.

Q. Before you came here, what was your understanding as to the content of that coat, in your previous comment on the advertising?

A. I thought it was a combination of wool and Vicuña—Alpaca and Vicuña.

Q. Have you had any personal calls from any customer for it?

A. Oh, yes, we occasionally get a call for a Vicuña coat.

Q. Do you know what their understanding of the contents is of this Alpacuna coat?

A. I don't recall ever seeing an Alpacuna coat, but from the advertising and what I have heard, I thought it was similar to a camel hair coat.

Q. Have you had any customers express any opinion as to the contents?

A. Well, they have inquired. We would sell them something else.

Q. Did they give you any idea what they thought it was composed of, or anything of that sort?

A. Why, I can't recall ever having anyone asking me what was in them, no.

Q. As I understand it, you assumed, so to speak, what this material was?

A. That is right.

Q. And you never had any contacts which disillusioned you about that?

A. No, I never have.

MR. WILLIAMS: The witness is with you.

Cross-examination.

By MR. McCracken:

Q As a matter of fact, Mr. Kelley, so far as you know, you never saw an Alpacuna overcoat, did you?

A. No, I don't recall ever seeing one.

Q. And people that came and asked for it did not sit down and analyze its contents with you, did they?

A. No.

Q. So that you don't know whether they thought it was all wool, or not?

A. No.

Q. They never said so?

A. No.

Q. Now, referring to this statement, "There is only one Alpacuna Coat", that means, does it not, that there is only one overcoat carrying that tradename, and that is the overcoat of this particular manufacturer who makes it? That is what it means, doesn't it?

A. Repeat that question, please.

Q. It means there is only one overcoat carrying that trade-name, and that is the overcoat made by this manufacturer, Jacob Siegel Company, just as one would say there is one Buick automobile, which would mean there is one automobile carrying that name, and that is the car carried by the Buick manufacturer.

A. That is a fair comparison.

MR. WILLIAMS: I object, Your Honor, to that comparison. There may be two cars exactly, one a Buick and one a Ford.

TRIAL EXAMINER REARDON: Let us say there is only one Bayer's Aspirin.

By MR. McCracken:

Q. Yes, there is only one Bayer's Aspirin, and that is the aspirin put out by the Bayer's Manufacturing Company. That would be a fair statement, would it not?

A. Yes, that would be a fair statement.

Q. There are lots of other aspirins—

A. But it is one aspirin.

Q. There are lots of other aspirins, but there is one Bayer's Aspirin.

Now, you do happen to have heard of an animal called the Vicuna.

A. Yes.

Q. And, of course, you are familiar with the fleeces that go into certain fabrics.

A. Yes, I have handled Vicuna.

Q. How many Vicuna overcoats have you had in Wanamaker's, to your recollection?

A. We have had three.

Q. How much did you sell them for, retail price?

A. Six years ago they were \$475.

Q. Have you had any since then?

A. No.

Q. You have not had one in six years. It is a very rare garment, isn't it?

A. Uh-huh.

Q. Have you talked to customers that come off the street who know that name and know what it is all about?

Well, occasionally, you get someone inquiring, wanting to know what it is.

Q. They inquire as to what it is, but they don't know?

A. No, they don't know what it is.

Q. In other words, a very small percentage of the people that come into your store that you come in contact with with respect to that know anything about it, do they?

A. No. Only recently has there been some advertising of Vicuna.

Q. So that when you spoke of your coming to the conclusion that the word "Alpacuna" might have implied that the garment was made of Alpaca and Vicuna, you were speaking from the wealth of your own knowledge?

A. That is all.

Q. You couldn't say what an ignorant man, like me, would say when he looked at that ad?

A. No. A person looking at the ad would not know what the interpretation was.

Re-direct-examination.

By Mr. WILLIAMS:

Q. You find the public much more enlightened, however, on advertising, don't you?

A. Well, I think people are more familiar with Vienna than they have been before.

Q. There is a general effort to familiarize people with various things on the market generally?

A. Certainly in Philadelphia there is.

Q. So what was true five or six years ago would not be true today, would it, in that respect?

A. No, I don't think so.

Q. So, therefore, there is a continual increasing knowledge of what you might call superior things; is that right?

A. Well, I think there is more information on Vienna than there has been, yes.

Q. And you expect to find a good many more people now, as against five years ago, that know about this?

A. Well, certainly more. I don't know about a good many.

TRIAL EXAMINER REARDON: That is all in the record.

MR. WILLIAMS: I hate to do it, but I want to go back to the illustration used by Mr. McCracken.

By Mr. WILLIAMS:

Q. In connection with the one coat, one Alpaca coat, if you buy a Buick car, you would not expect to find the same manufacturer putting out another Buick car that would be something else, would you?

A. No.

• • • • (N. T. pp. 122, 123.)

BERNARD J. APPEL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you state your name and business connection?

A. Bernard J. Appel, sales and advertising manager, Jacob Siegel Company.

Q. How long have you been such, sir?

A. Seven years.

Q. And you are generally in charge of the advertising that goes out of the office?

A. Yes, I am.

* * * (N. T. pp. 123, 133 inc.)

Q. It has, however, the coined word "Alpacuna".

A. It certainly has.

Q. Unquestionably the "Alpa" comes from the first part of "Alpaca".

A. I believe so.

Q. And isn't it a fact that the "cuna" comes from the ending of "Vienna"?

A. No. It is not "cuna"; it is "una."

Q. Well, why isn't it?

TRIAL EXAMINER REARDON: Well, this is argument. He says one thing and you say another.

By MR. WILLIAMS:

Q. How do you make this "c" any more a part of the word "Alpaca" than that is a part of the beginning of the tail end of the "cuna" in the word "Vienna"?

A. Well, "Alpaca" is spelled A-l-p-a-c-a, and, as I understand the story—I didn't coin the word, but I talked to the man who did, and he dropped the one vowel "a"

from "Alpaca." He didn't put the "c" in because the "c" was already there. The "una" was one.

Q. Well, the "cuna" is the rear end of "Vicuna."

A. Well, "A-l-p-a-c" is the first part of "Alpaca."

Q. Isn't it a strange coincidence that you find the word "una" in "Alpacuna"?

A. I have devised hundreds of names.

TRIAL EXAMINER REARDON: This is only argument, gentlemen.

THE WITNESS: Well—

MR. WILLIAMS: I am asking questions. It may sound like argument.

TRIAL EXAMINER REARDON: You are not getting answers except the witness' opinion. You have a different opinion. Everybody can have a different opinion.

MR. WILLIAMS: All right.

By MR. WILLIAMS:

Q. Now, you used, according to the answer, the Vicuna in connection with the sale of your coats in the early part of your business.

A. I never did; no, sir.

Q. Well, your company.

A. I don't know that the company used the word "Vicuna."

Q. At any rate, according to the answer, Vicuna was used in the early part of the game, and therefore Vicuna was understood by your company earlier than this period.

A. As far as my knowledge, no.

Q. In other words, it was used prior to your coming with the company.

When did you come with this company in this capacity?

A. In 1932.

Q. Therefore, if it was used at all, it was used prior to that time, wasn't it?

A. I don't know. I have no knowledge of it, Mr. Williams. Our files do not disclose any use of the word "Vicuna." I have searched them personally.

Q. Would you say that since 1932 Vicuna has not been used in connection with your advertising in any way?

A. Vicuna has not been used, to my knowledge, and I would like to see the advertising that does have it.

Q. I will ask your counsel to produce them.

MR. WEINROTT: I will ask you because we have told Counsel for the Commission that there was no such thing.

* * * * (N. T. pp. 135, 136.)

By MR. WILLIAMS:

Q. Now, in your overcoats you put nothing at all to change any impression that might be obtained from the word "Alpacuna," do you?

A. It never occurred to me, Mr. Williams, that anybody would interpret "Alpacuna" to have Vicuna in it. To my personal knowledge—I have been in this business 23 years, and I have asked hundreds of people that question—I have never had one person tell me they knew what a Vicuna was when I asked him.

* * * (N. T. pp. 137, 156 inc.)

Cross-examination.

By MR. McCracken:

Q. Mr. Appel, along that line, I want to ask you to run your eye over some 23 registrations of trade names, all including the suffix "cuna" or "una," and after you have looked at them I am going to ask one question about them.

MR. WILLIAMS: I object to that. I do not see what bearing that has.

MR. McCracken: You have brought it out.

TRIAL EXAMINER REARDON: Just a moment. The witness is on cross-examination. He may answer the question.

By MR. McCracken:

Q. Just run over your eye over them quickly.

Do you know those names?

A. Yes, I do.

Q. Do you know those names?

A. I do.

Q. Are they all applicable to overcoats?

A. All applicable to cotton-back overcoats, without exception.

Q. And you know others ending with "cuna"?

A. I do.

Q. And beginning with "cuna"?

A. Many more.

Q. And where that suffix appears at the beginning or at the end of the name, is it known in the trade as a cotton back overcoat?

A. Yes.

Q. Of the same construction as your overcoat?

A. Yes.

Q. And have they all been registered since the Jacob Siegel Company had its name registered?

A. They have.

TRIAL EXAMINER REARDON: What do you mean by "the same construction"? Do you mean the same fabric?

By MR. McCracken:

Q. When I say "the same construction" I mean with a cotton back and with a hair and wool exterior.

A. Yes.

Q. In other words, these are your competitors and imitators?

A. That is right.

By Mr. McCracken:

Q. Mr. Appel, referring to Commission's Exhibits 1-A to 1-J, which you stated were your 1938 mats—

A. Yes.

Q. —I ask you whether these were made up by you prior to the filing of the original complaint in this issue before the Commission.

A. Considerably ahead of the filing of the complaint.

Q. So any reference to cotton backing—I have in mind particularly those on Exhibits 1-G, 1-H, 1-I, and 1-J—that advertising material depicting graphically the cotton backing, were all prepared before this complaint was filed with the Commission.

A. All ahead.

Q. Mr. Appel, there is a magazine called "Men's Wear," isn't there?

A. Yes, there is.

Q. And prior to the filing of the complaint in this case were there any advertisements in "Men's Wear" advertising this fabric as made with a cotton backing?

A. Yes. There were a series of advertisements inserted in "Men's Wear" for eight weeks—sixteen weeks, rather, commencing February 2 or 3, 1938, depicting graphically the construction and denoting the contents of the fabric.

Q. And that was before any complaint was filed?

A. Before any complaint was filed.

Mr. WILLIAMS: Was that before the investigation was made? □

THE WITNESS: We had no knowledge of any investigation being made, or any complaint being filed.

(N. T. pp. 160, 162 inc.)

GEORGE W. CONNOR was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Please state your name.

A. George W. Connor.

Q. What is your business, Mr. Connor?

A. Member of the staff of the Philadelphia Better Business Bureau.

* * * * (N. T. pp. 162, 163.)

Q. In connection with that work have you had any contacts with fabrics and things of that sort?

A. Yes, as far as shopping them is concerned and bringing them in to be analyzed.

Q. What knowledge, have you, of the word "Alpacuna"? What contact have you had with it?

A. Well, the first that I heard of it was a Federal Trade release that we received. That was the first time we ever had any real cognizance of the word.

Q. Well, do you know anything about the Alpaca animal?

A. I know there is an animal—I believe it inhabits the Andes Mountains in South America.

Q. Do you know anything about Vicuna?

A. Yes. I believe that comes from the same neighborhood. It is somewhat similar. I don't know whether they look alike or not. I know—I believe that the fibre from these animals commands a higher price in the market than ordinary woolen garments, and sought as such for its lightness and warmth.

* * * * (N. T. p. 163.)

Q. Supposing you were looking for an overcoat and saw this ad, what impression would you get,—this ad being marked Ad No. 103, Commission's Exhibit 2?

MR. McCracken: That is objected to.

TRIAL EXAMINER REARDON: The objection is overruled at the present time.

A. Well, I would get the impression that the coat was made from the wool of the Alpaca and the Vicuna, or a mixture of them.

By MR. WILLIAMS:

Q. Would you get the impression it was made up of anything else, from that advertisement?

A. No, I would not, with the exception of the rayon or cellanese, whatever that is,—the lining.

* * * * (N. T. pp. 164, 166 inc.)

Cross-examination.

By MR. McCracken:

Q. Did you ever see the advertisement which I now show you, which is Commission's Exhibit 1-H? That advertisement contains, does it not, a complete description of the fabric including the cotton backing graphically described.

A. What was your question?

Q. Did you ever see this advertisement before?

A. No, I never saw that advertisement before.

Q. You see it now, don't you?

A. Yes.

Q. That advertisement, Commission's Exhibit 1-H, contains, does it not, a picture of the fabric showing the cotton backing described as fine, long, staple cotton backing, and the exterior consisting of blended hair, blended rare animal hair and fibres and fine virgin wool?

A. Yes.

Q. That is the description in that particularly advertisement?

A. That is the description.

NELLIE FENNEL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name and business, if any?

A. Nellie Fennell.

Q. Have you any occupation?

A. Housekeeper for the family.

Q. Do you from time to time buy clothes?

A. Yes, I do.

Q. Are you familiar with the word "Alpacuna"?

A. I have seen it in ads quite a number of times.

Q. Are you familiar with the word "Vicuna"?

A. Yes, I am.

Q. Do you know generally what those two words represent?

A. Yes, I do.

Q. What, please?

A. My impression of Alpacuna was that it was a material derived from the durable hair of the Alpaca sheep and the finer hair of the Vicuna, which is a native of South America.

Q. And what is a Vicuna, if you know? Do you know what a Vicuna is?

A. Yes. It is like a sheep from—I know it inhabits the Andes, Bolivia, that section of the country. The hair is very fine, very warm.

Q. Where did you get the information?

A. Well, I have known that quite some time.

Q. You say you are familiar with Vicuna?

A. Yes.

Q. And you have seen the advertisements in the newspapers?

A. Yes.

* * * * (N. T. pp. 167, 168.)

By MR. WILLIAMS:

Q. State what impression you would get from the ad.

A. My impression is it was entirely made from wool. That is the impression I got when I first read it.

Q. What impression do you get as to the fibre? What particular wool fibre? What impression would you have as to that?

A. Just what do you mean by the word "fibre" in that sense?

Q. Well, what animal would the fibre come from?

A. I imagine—my impression was when I first read that ad that the cloth from which this overcoat was made was made from the wool of the Alpaca sheep and the Vicuna sheep, and I thought the Alpaca was for durability and the Vicuna was for warmth and lightness.

Q. And where do they inhabit, if you know?

A. Well, my recollection is South America.

Cross-examination.

By MR. McCracken:

Q. What is wool, Mrs. Fennell?

A. What is wool? Well, I imagine the hair of most animals would be classed as wool.

Q. The hair of most animals?

A. Yes.

Q. Would the racoon be classed as wool?

A. No, but yet there is a woolly substance underneath the skin.

Q. Isn't wool the fleece of the sheep, and nothing else?

A. No. It is not always referred to as—I mean sheep. There is always wool on sheep.

Q. Exactly.

A. But there is also wool used in reference to other animals.

Q. What kind?

A. Well, I would say the wool of the rabbit.

Q. You would?

A. Yes, I would.

Q. What is a sheep?

A. An animal.

Q. To what family does it belong?

A. That is something I don't know.

Q. What is an Alpaca?

A. A sheep, or a goat.

Q. Is it? An Alpaca is a goat? Now, think again, please.

A. Well, personally, I think they are both.

Q. What?

A. Both. There is an Alpaca sheep and an Alpaca goat.

Q. Oh, there is?

A. Yes.

Q. Well, which one grows in the Andes, the Alpaca sheep or the Alpaca goat?

A. The goat.

Q. The goat. And it has horns, I suppose, like other goats?

A. Well, I never looked into that.

Q. What is a Vicuña?

A. A Vicuña belongs to the sheep family.

Q. Belongs to the sheep family? You are quite sure of that?

A. Well, I am not a naturalist.

* * * * (N. T. p. 170.)

By MR. McCracken:

Q. You have stated that you thought that that name implied that the garment was made of wool.

A. Yes, I did.

Q. Do you happen to know that neither the Vicuna nor the Alpaca has any wool on it; that they do not belong to the sheep family or the goat family; but that they are a specie of camel, and what they bear is hair and not wool?

A. I wouldn't be in a position to know that.

Q. Then, all that you have said with respect to your knowledge of the Alpaca and the Vienna is in accord with your last statement, isn't it?

A. Well, I understand that the contention is that the coat has a cotton backing, and that that is what you are trying to prove.

Q. That is not the question you were asked.

You said that the impression upon your mind of the word "Alpacuna" was that that garment was made of the hair—you called it wool—of the Alpaca and of the Vienna. You arrived at that impression how? Just from the name itself or from anything in the advertisements?

A. Well, from the name itself.

Q. Just from the name itself, and that is because you take the three letters u-n-a at the end and conceive that they come from Vicuna?

A. I took e-u-n-a. I thought that might come from it.

Q. But it is quite possible that the A-l-p-a-c is from Alpaca?

A. Well, that is just a name, a trade name.

Q. You are not here under subpoena?

A. No, I am not.

Q. How did you happen to come, may I ask?

A. I was asked to come here as a customer-buyer.

* * * * (N. T. p. 172.)

J. SPENCER BROCK, JR., was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

MR. WILLIAMS: It is stipulated that this witness would testify along the line of the last two witnesses, to facilitate the matter, and he won't be interrogated.

TRIAL EXAMINER REARDON: Both as to direct and cross-examination?

MR. WILLIAMS: Yes.

MR. McCracken: I would like to ask one question. I want to know how Mr. Brock came here, if not through a subpoena.

THE WITNESS: I was asked by Mr. Hugh Smith, of the Better Business Bureau.

MR. WILLIAMS: I asked him if he knew any people I could call of the general public.

MR. McCracken: I think it would be well to know what Mr. Brock's business is.

THE WITNESS: Advertising research on a free lance basis.

TRIAL EXAMINER REARDON: It is stipulated by the attorneys for the Respondent and by the attorney for the Commission, that the witness would testify—both sides stipulate?


MR. McCracken: That is right.

TRIAL EXAMINER REARDON: As to examination and cross-examination?

MR. McCracken: Yes.

MR. WEINROTT: And the same objections and rulings.

TRIAL EXAMINER REARDON: Same rulings: motion to strike the testimony, and the same ruling.



MR. McCracken: I think I moved to strike the testimony of the last witness, Mrs. Fennell.

MR. McCracken: Oh, my gracious. Is it too late for me to move to strike now? I would like to move to strike as to that part of the testimony that purports to interpret the advertisements in evidence.

TRIAL EXAMINER REARDON: Of what witness?

MR. McCracken: Of Mrs. Fennell, and also of Mr. Brock.

TRIAL EXAMINER REARDON: Motions granted; with exceptions to the Commission.

JACOB SIEGEL was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct-examination.

By MR. WILLIAMS:

* * * * (N. T. p. 175.)

Q. Now, therefore, Alpaca, according to your understanding, and Vicuna, would not be wool but would be hair or something else.

A. I don't know about Vicuna. All I know is Alpaca, mohair, and wool. That is what we handle.

* * * * (N. T. p. 176.)

EPHRAIM FREEDMAN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

* * * * (N. T. pp. 182, 183.)

Q. What is your business connection?

A. I am director of Macy's Bureau of Standards.

Q. How long have you been such?

A. Over twelve years.

* * * (N. T. p. 183.)

By MR. WILLIAMS:

Q. Does your store deal in overcoats and other men's wear?

A. It does.

* * * * (N. T. pp. 183, 184.)

Q. I hand you Commission's Exhibit No. 30 which purports to be an advertisement of Kann's Store in Washington, D. C. Will you read that advertisement that deals with overcoats named Alpacuna Overcoats. Examine it and see what impression you get.

A. The whole advertisement?

Q. Will you check over that advertisement and state what your understanding is on the fiber content of that coat, as gathered from that advertisement?

MR. McCracken: I object as I have done before to the interpretation of the advertisement by this or any other witness in as much as the advertisement speaks for itself.

TRIAL EXAMINER REARDON: Well, I ruled on that before. I will overrule the objection and give you an exception.

A. I take it this coat is made of a combination of alpaca and vicuna fibers.

* * * * (N. T. pp. 185, 186.)

Q. At any rate, these fibers here are generally spoken of and come under the name of wool in a broad sense?

A. That is correct.

Q. When a person refers to that as a wool overcoat, all wool, that would not be repelled by the fact is combined alpaca and vicuna along with true wool which would be sheep's wool?

A. That is right.

* * * * (N. T. pp. 186, 188 inc.)

Q. If that book with samples, Commission's Exhibit 5, were handed you what would you gather from examination of that swatchbook, to what conclusion would you come with regard to the fiber content of that coat?

MR. McCracken: My objection runs to the entire line, of course, you understand.

MR. WILLIAMS: Yes.

TRIAL EXAMINER REARDON: Yes.

THE WITNESS: I would want to test the materials in this book, the swatches in here to see whether or not they were as represented.

TRIAL EXAMINER REARDON: How are they represented?

THE WITNESS: They are represented as Alpaca topcoats and Alpaca overcoats.

By MR. WILLIAMS:

Q. Aside from testing in the laboratory what would you gather from that as to the fiber content?

A. Using the general term wool I would consider they were wool coats.

Q. Unless you made laboratory tests you would consider that swatchbook would tell you those were wholly wool?

A. That is right.

Q. And made of what fibers?

A. Alpaca and vicuna.

Q. At least that?

A. That is right.

* * *

(N. T. pp. 189, 191 inc.)

TRIAL EXAMINER REARDON: Have you ever sold an Alpacuna coat?

THE WITNESS: I do not believe we have sold any Alpacuna Overcoats.

* * *

(N. T. pp. 191, 192.)

Cross-examination.

By MR. McCracken:

Q. You say Macy's have never sold the Alpacuna coats to your knowledge?

A. That is right.

Q. Therefore, you do not know when Siegel Company sell the Alpacuna Overcoats to a buyer of such a store, you do not know what the representation is as to the content of that coat?

A. There are times when we do know because a buyer comes along and says, "These materials are represented to us as being all wool."

Q. You do not know that as to the Alpacuna coat of your own knowledge?

A. No, I do not.

Q. You have decided that an examination of this advertisement, Commission Exhibit No. 30, indicates that

it is made entirely of a wool fabric. Kindly show me in any point in that advertisement the word wool. Does that word appear?

A. No. I have not seen the word wool in that advertisement.

Q. Examine it carefully; it is not there, is it?

A. No. I do not see it here.

Q. The word "Alpaca" does not appear?

A. No.

Q. The word "Vienna" does not appear there?

A. That is right.

Q. No other type of hair or wool appears in that advertisement, does it?

A. That is correct.

Q. The advertisement reads,

"Alpacuna Overcoats, The World's Ideal Combination of Warmth, Wear and Lighter Weight," passing the price,

"Alpacuna overcoats are noted far and wide for their warmth, superior quality, unique fabric construction and thoroughbred styling. You can wear them year in and year out, and they never lose their silky luster or their distinctive swagger lines. In short, they have everything you could possibly want in an overcoat and at the standard price of forty dollars, they're the out-and-out overcoat investment of the year!"

There is not a word in that advertisement that in the least indicates or suggests they are made of all wool, all hair, or part one or part another or some silk.

A. I disagree with you.

Q. Explain yourself.

A. I disagree with you because the term Alpacuna implies to me that it is a combination of the fibers of two different animals, alpaca and vicuna, and therefore, the advertisement appears to me to be a description of a coat

of that type, I mean an alpaca and vicuna coat, and since alpaca and vicuna are at times generally referred to as wool just as camel hair and mohair and cashmere I would take it this then would be a wool coat.

Q. Your thought and you now testify the only thing upon which you base your evidence, your testimony, that a coat is made of woolen fiber is the combined or coined word "Alpacuna"?

A. And also, if nothing else were present that would be sufficient for me, but the picture of the animal on the label goes that much further.

Q. And indicates that there is at least that fiber in the coat?

A. That is right.

Q. There is nothing there to indicate the coat is made of Alpaca and vicuna except the word "Alpacuna"?

A. That is right.

Q. Do you happen to know the kind of a combination these two hairs would make if woven together?

A. I do not.

Q. You do not know that would be an impractical fiber?

A. I do not know.

* * * * (N. T. p. 195.)

Q. In other words, to sum your testimony up it is, as I understand it, that that is an advertisement containing a coined word "Alpacuna" which you interpret from your experience to be a combination of alpaca and vicuna, it is a representation that this coat is made at least with those fibers in it?

A. That is correct.

Q. When did you first hear of a vicuna and where?

A. Well, I probably would have to go back as far as I do not know, probably a visit to the American Museum of Natural History years ago.

Q. Years ago, that is correct. You saw a stuffed ani-

mal which was labeled a vicuna. It is not a commercial product, is it?

A. I cannot say that because it does appear in commerce.

Q. In small quantities?

A. That is right.

Q. Did you ever see a vicuna overcoat?

A. Not that I could recognize it as such. I have seen a vicuna fabric.

Q. What do you know about the vicuna animal?

A. It belongs to the camel family, it is a native of South America, its hair is very fine and soft.

Q. Is it a wild or a domesticated animal?

A. I cannot say from first-hand knowledge, I have never been down there.

Q. You do not know enough about it to know whether it can be domesticated and sheared like a sheep or not?

A. I presume it can be sheared.

Q. You presume?

A. Yes, I am not in a position to speak authoritatively upon it.

Q. When did you first come to the conclusion in your own mind the word "Alpacuna" meant a combination of alpaca and vicuna, when you first saw it or when you talked to some member of the Federal Trade Commission staff who has asked you to come and testify in this case?

A. No, I have run up against the word "Alpacuna" in advertisements from time to time and I have always felt that it referred to alpaca and vicuna.

Q. It is obviously a coined word?

A. That is right.

Q. Do you know what is in the overcoat?

A. I do now because I saw a release of the Federal Trade Commission a couple of months ago.

Q. Have you examined the overcoat?

A. No.

Q. You know it is a cotton backed overcoat with a wool and hair exterior?

A. So I understand now.

Q. There is nothing wrong in selling a cotton backed overcoat, you sell them in Macy's?

A. There is nothing wrong in selling a cotton backed overcoat.

* * * * (N. T. pp. 197, 200 inc.)

FREDERICK SCHMERTZ was thereupon called as a witness for the Commission and having been first duly sworn testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. What is your address?

* * * * (N. T. p. 200.)

A. Bronx, New York.

Q. What is your business connection?

A. I am associated with John Wanamker in the legal department.

Q. And have been for how long?

A. I have been associated with John Wanamaker for approximately thirty-three years, I have been in the legal department for approximately twenty years.

* * * * (N. T. p. 200.)

Q. Have you ever noticed any advertisements of the Alpacuna overcoat?

A. I have not particularly noticed, I might have casually run across an ad here and there for another store carrying that name.

Q. Do you know of such an overcoat actually through advertisements?

A. If I would see such an ad carrying such an overcoat.

Q. Do you actually know of such coats by advertisements?

A. Not particularly, no, sir.

Q. Suppose you were to see this advertisement marked Commission's Exhibit No. 30; what would you gather from that advertisement as to the fiber content of that coat advertises?

MR. McCracken: I object to that for reasons heretofore stated.

TRIAL EXAMINER REARDON: Objection overruled. Exception noted.

THE WITNESS: Alpacuna overcoats conveys to me Alpaca and Vicuna, a combination of alpaca and vicuna.

By MR. WILLIAMS:

Q. Would it not convey to you that the coat was wholly wool, that is considering alpaca and vicuna in the wool class which we are doing for the purpose of this case?

A. I have sort of a general idea that alpaca and vicuna are wool products and I would therefore conclude from that phraseology it was a wool overcoat.

Q. Would you think from that advertisement there was any cotton in that coat in any way, shape, or form?

A. I could not say that, I could not say whether there was any cotton in the overcoat.

Q. Would you expect to find any cotton anywhere in that overcoat from that advertisement?

A. I do not know whether I could say that, Judge, I would not know the composition of the overcoat.

Q. If you read the advertisement would you expect to find cotton in that overcoat?

A. I would definitely feel that coat comprised alpaca and vicuna which are wool products and that I would not know what else the coat would contain if anything.

Q. What would you gather from that advertisement?

A. I would not know. I would not think in terms of what else is contained in that overcoat. I would assume it was a coat that contained alpaca and vicuna.

Q. And nothing else?

A. I would not go beyond that. I would not think any further.

* * * * (N. T. pp. 202, 203.)

Cross-examination.

By MR. McCracken:

Q. Is there anything in that advertisement that suggests or guarantees or warrants this is an all wool overcoat?

TRIAL EXAMINER REARDON: Referring to Commission's Exhibit 36.

THE WITNESS: There seems to be no statement in this advertisement guaranteeing the fact it is all wool.

By MR. McCracken:

Q. The only indication that it has any wool in it at all is your interpretation of the coined word "alpaca" as indicating a combination of the alpaca hair and vicuna hair?

A. You mean Alpacuna; you said alpaca.

Q. Yes.

A. This ad would indicate that to be a fact.

Q. There is testimony in this case that when that name was coined it was coined with the thought in mind of using the slogan, there is only one Alpacuna coat, and the slogan, there is only one, would always apply, and that the word Alpacuna was manufactured by taking the word alpaca and adding to it the word una which is a Latin significance of the word one.

Having that in mind, that testimony in mind, would you still believe Alpacuna would indicate both and alpaca and vicuna hair?

* * * * (N. T. p. 205.)

THE WITNESS: I have taken cognizance of what you told me. This is really the first time that angle of it impresses itself upon me.

By MR. McCracken:

Q. Particularly that the word una means only one?

A. Having studied Latin I know una means one; and alpaca being a fiber alpacuna has conveyed to me it is a combination of alpaca and wool.

Q. That is because you know of the vicuna animal?

A. Yes.

Q. How many people do you suppose, what proportion of the people that come in there have ever heard of a vicuna?

A. I could not say.

Q. A very small proportion?

A. I could not say.

Q. It is a very little known animal, is it not?

A. I could not say.

Q. Have you ever seen a vicuna overcoat?

A. I could not say, I do not know whether I could recognize it unless it was analyzed or pointed out to me.

Q. Do you know how many of those were made in the course of a year in the United States?

A. I have no idea.

* * * * (N. T. p. 206.)

HENRY J. HEIMS was thereupon called as a witness for the Commission and having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. State your name for the record, please.

A. Henry J. Heims.

Q. What is your address?

A. Sixty-five Central Park West.

Q. In what city?

A. New York, New York.

Q. What is your business connection?

A. Vice president of Finchley, Incorporated.

Q. Where is that store?

A. 564 Fifth Avenue.

Q. In what city?

A. In New York City.

Q. What sort of store is Finchley's?

A. Finchley's is a clothiers and haberdashers.

Q. Have you ever heard of the alpaca overcoat?

A. Yes, I have heard of it.

* * * * (N. T. p. 207.)

Q. Twenty years. Will you read Commission's Exhibit 36 or examine it and state what impression you gather from that as to the fiber content of the coat advertised?

MR. McCracken: I object to that for the reasons already stated.

TRIAL EXAMINER REARDON: Objection overruled.

* * * (N. T. p. 207.)

By MR. WILLIAMS:

Q. Are you able to state whether or not you gained any impression from that ad as to the fiber content of the coat advertised?

A. I would think it was a wool garment.

Q. Do you gather anything from it as to the actual fiber content, the individual fibers?

A. It has alpacuna which is as advertised.

Q. What does that word mean to you, alpacuna?

A. It means it has vicuna in it and alpaca.

* * * * (N. T. pp. 208, 209.)

Q. What type of overcoat do you sell, what are the names of your overcoats?

A. Our overcoats are Fashion Park, ninety per cent. of our coats.

Q. What price are they?

A. They range from \$45.00 up to \$150.00.

Q. Your wool coats, what is the range of your wool coats?

A. \$45.00 to \$150.00, wool coats.

* * * * (N. T. pp. 209, 210.)

Q. What coat with a cotton backing do you sell?

A. We do not sell any cotton backed coats.

Q. You do not?

A. No, we do not sell any cotton backed coats.

Q. You say you happen to know what the contents of the coat is actually?

A. Actually.

TRIAL EXAMINER REARDON: You mean of respondent's coats as sold as Alpaca?

THE WITNESS: We know what is in the back of it.

TRIAL EXAMINER REARDON: You mean by that a coat sold as the Alpaca coat?

THE WITNESS: Yes.

* * * * (N. T. pp. 210, 212 inc.)

Cross-examination.

By MR. McCracken:

Q. You say that you know the construction of the Alpacuna overcoat as having a cotton back, you know that as a buyer?

A. Yes.

Q. Therefore, there has never been to your knowledge any warranty the Alpacuna coat was all wool?

A. Personally, I knew that all the time.

Q. There never had been any such warranties?

A. Not to my knowledge.

Q. It is a well known fact that that is a cotton backed garment?

A. In the trade they would ask, if they did not know they would ask the manufacturer.

Q. It is a well known fact among the buyers of coat stores this is a cotton back coat?

A. I cannot speak for the other buyers, I can speak for myself.

Q. You do know the terms in the trade and in the general knowledge of the trade about this overcoat. Are you not familiar with the fact, Mr. Heims, there are a number of overcoats ending in the word cuna or beginning with the word cuna which are also cotton back garments?

A. I could not say that.

Q. You are not familiar with that?

A. No.

Q. Will you run your eye over that series of trade names which have been marked for identification Respondent's Exhibits 1 to 23 for identification; do not read the whole thing, just the names.

A. There are enough of these.

Q. Are you familiar with any of these garments?

A. No.

Q. The only one you are familiar with is Alpacuna?

A. That is right.

Q. You see from those statements that they are trade marks for overcoats?

A. That one is the only one I see; I have not read the other ones.

Q. There are top coats, overcoats, and suits?

A. Those bathing suits, I would not know anything about that.

Q. The next one is men's top coats?

A. I would not know anything about that.

Q. Would you gather that each one of those as you read those, each one of those garments had vicuna in it because it has the cuna on the end of it?

A. Would I gather that?

Q. Yes.

A. That is pretty hard to say unless I examined it.

Q. I am talking about the word.

A. The word?

Q. Yes.

A. That is pretty hard to say.

Q. It is just as hard to say that Alpacuna has vicuna in it?

A. Yes.

Re-direct-examination.

• • • • (N. T. p. 215.)

By Mr. WILLIAMS:

Q. In reference to Ancuna, would you gather any understanding from reading an ad of that kind, as to the fiber content?

A. Whatever the ad would say I would gather that was in the garment.

Q. Would you gather there was any vicuna in that or not from the advertisement?

A. I probably would not, personally; I do not know what the individual would gather.

Q. You do not know whether you would or not?

A. I know vicuna.

Q. Would you expect to find any vicuna in that coat?

A. In what coat?

Q. Of which they just showed you an advertisement, Ancuna?

A. I think it is a sweater, I do not think it is a coat. What is this one, Ancuna?

MR. WILLIAMS: Men's and Boys' overcoats. Suppose you identify one.

MR. McCracken: Respondent's Exhibit No. 1, referring to registration of trade mark "Ancuna" registered as referring to mens' and boys' overcoats, mens and boys topcoats and so forth. Judge Williams is asking you about that word.

THE WITNESS: I think I would be willing to say there is some Vienna in that if that announcement came out as an Ancuna coat.

* * * * (N. T. pp. 216, 217.)

Re-cross-examination.

By Mr. McCracken:

Q. What else would you gather was in the coat called Ancuna?

A. Lots of things, maybe wool, maybe cotton; who knows?

Q. And the "An" does not mean anything, does it; or it might mean as referring to respondent's Exhibit No. 7, "Macuna" a trademark registered by S. Makransky and Sons, the "Mac" or "Ma" probably does stand for Makransky?

A. Yes.

Q. What would you think was in that coat?

A. The same thing.

Q. You would think that is a vicuna coat made by Makransky?

A. With some vicuna.

Q. How much?

A. Very small.

Q. Infinitesimal?

A. Yes.

* * * * (N. T. p. 218.)

MRS. FREDERICK L. WAKEHAM was thereupon called as a witness for the Commission and having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you state your name for the record, please?

A. Mrs. Frederick L. Wakeham.

Q. What is your address?

A. 210 West Seventieth Street.

Q. In what city?

A. New York City, New York.

Q. What is your avocation or vocation?

A. I am just a mere consumer.

* * * * (N. T. p. 219.)

Q. Are you acquainted with the word Alpacuma as applied to any clothing?

A. You want to know what I would think if I saw the word or if I bought anything named Alpacuma?

* * * * (N. T. p. 219.)

Q. I show you this advertisement which is marked Commission's Exhibit 30, Kann's Store. Read that and

see what you would gather from that as a consumer or purchaser, as to the fiber content of the article as advertised?

MR. McCracken: I have the same objection as before to the interpretation of the ad by the witness.

TRIAL EXAMINER REARDON: Objection is overruled, and an exception is noted.

THE WITNESS: If I read this advertisement I would think this coat was an all wool coat; I would consider it an all wool coat.

By MR. WILLIAMS:

Q. Can you state further whether or not you would have any understanding as to the individual fiber content, that is the analysis of it.

A. Because of the name I would consider it a combination of alpaca and vicuna.

Q. What is your understanding as to the classification of those two fibers?

A. I know they are both goats, one comes from South America and the other from the Andes. The vicuna comes from the Andes and is supposed to have long silky fiber and fine quality wool.

* * * * (N. T. pp. 220, 222 inc.)

Cross-examination.



By MR. McCracken:

Q. Had you ever heard of an Alpacuna overcoat, Mrs. Wakeham, until you brought into this case as a witness?

A. Oh, yes, I did hear of it a short time ago, but had never seen an advertisement.

Q. Have you seen an Alpacuna overcoat?

A. No, I have never seen one.

Q. You do not know what it is made of?

A. I judge what it is made of, being an intelligent person; I think it is made of alpaca and vicuna.

Q. That is all you know about it?

A. That is what I would know after I read that advertisement, if I saw Alpacuna I would think of Alpaca and Vicuna.

Q. That advertisement led you to the belief it is an all wool overcoat?

A. All I know is that both these goats are wool goats.

Q. Do you happen to know neither is a goat and neither bears wool?

MR. WILLIAMS: That is objected to. I object to a positive statement.

MR. McCracken: I said do you happen to know neither is a goat and neither bears wool. Do you happen to know each is a camel and they bear hair?

THE WITNESS: That is splitting hairs because the vicuna is sometimes called a goat and so is the alpaca.

MR. McCracken: Are they really?

THE WITNESS: Yes, I think you can find it in the dictionary, if you look it up.

* * * * (N. T. p. 224.)

Q. I call your attention to Exhibit 1-J of the Commission.

A. I see, "A Miracle of Science."

Q. Keep your eye running down. You observe here on one side it says, "Animal coat, hair and hide," and on the other side, "Alpacuna, blended rare animal hair fibers and fine virgin wool," with a line saying, "fine, long-staple cotton backing."

What kind of an overcoat would you think that was?

A. I would need a magnifying-glass to see the "cotton backing".

Q. I did not ask you that question.

A. You are asking me a question about the advertisement.

Q. Having read that with or without a magnifying-glass.

A. I say that requires a magnifying-glass and I say the consumer has a right to expect to have that in the same size print. I am the consumer, that is all I am interested in. —

Q. If the consumer's eyes were good, or good enough perhaps, it should not be hard to read that print and if you will be good enough to read those words so that you can actually see what it says I wish you would do so.

A. I can read.

Q. Then, looking at the words "fine, long-staple cotton backing and confining your testimony to that, what would you say was in that overcoat?"

A. If I had a magnifying-glass I would say it had a cotton backing, but what I want to know is why the consumer has not the right to have that little fine print somewhere where he can see it.

• • • • (N. T. p. 225.)

THE WITNESS: May I answer that? You seem to state that these animals are only hair animals. However, the dictionary states they have fine, long silky wool.

May I be excused?

MR. McCracken: I am glad to hear your interpretation of the dictionary.

THE WITNESS: We must go by something.

MR. McCracken: I am not going to bother you as to which dictionary says that.

THE WITNESS: I think you will find it in any dictionary.

• • • • (N. T. p. 226.)

Re-direct-examination.

By MR. WILLIAMS:

Q. What is that lower line there underneath the word "Alpacuna" and something that looks like a comb?

A. You mean the line that seems to be blocked out?

Q. Below that, what is that thing underneath that right-hand graphic representation of what Alpacuna is?

A. This little line here? It has fine, long-staple cotton backing and I would have remembered what the gentleman said anyhow.

Q. Could you read that readily?

A. No, I could not.

* * * * (N. T. pp. 226, 227.)

MR. H. J. KENNER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Please state your name.

A. H. J. Kenner.

Q. Please state your address and business connection?

A. I am general manager of the Better Business Bureau of New York City, Incorporated, 280 Broadway, New York, New York.

Q. How long have you been such?

A. Seventeen years.

* * * * (N. T. pp. 228, 229.)

Q. I hand you Commission's Exhibit No. 36 and ask you to examine that and see what that advertisement, it-

self, would convey to your mind, not what you may know personally, but what that would convey to you?

MR. McCracken: I have the same objection as before as to the interpretation of the advertisement by the witness.

TRIAL EXAMINER REARDON: Objection overruled, exception noted.

THE WITNESS: I would understand the word Alpacuna to mean that the coat is made of a separate combining alpaca and vicuna fibers.

* * * * (N. T. p. 229.)

Q. I hand you Commission's Exhibit No. 30 and ask you to examine that and see what you gather from it as to the fiber content, not what you may know about the coat personally, if anything?

* * * * (N. T. p. 230.)

THE WITNESS: Yes; with added emphasis on the meaning due to the reproduction of the trade mark or label which has a picture of an animal on it standing among the mountain peaks. That would be more convincing to my mind than the other one, and conveying the impression it was a combination, the fabric was a combination or is a combination of those two animal fibers, alpaca and vicuna.

Whether the animal is an alpaca or a vicuna or a llama or some other animal of that kind, I cannot tell exactly from the picture.

* * * * (N. T. pp. 230, 233, inc.)

Cross-examination.

By MR. McCracken:

Q. You say in reply to the Judge's question as to

the first of those advertisements you gather that was an all wool garment, Mr. Kenner. Look at the advertisement again, Commission's Exhibit 36 and tell me any place in that advertisement where there is a statement that it is an all wool garment?

* * * * (N. T. pp. 233, 234.)

Q. What is there in that advertisement that would indicate it was wholly composed of either wool or hair?

A. That is Commission's Exhibit No. 36?

Q. Yes.

A. To my mind the name Alpacuna, and then the text which reads, "laboratory tests by the Industrial Research Corporation, the country's leading textile engineers, prove scientifically that Alpacuna is 26.3 per cent. warmer, 61 per cent. longer wearing, one and one-half pounds lighter."

That would certainly indicate to me the presence of a very fine, high-grade fleecy fiber, which in a general sense, whether or not in a technical one, would be classified as a fine wool.

Q. Would it indicate that there was anything else in the overcoat?

A. It would indicate to me that there was no vegetable fiber in it.

Q. Is there a word said about the fact that there is no cotton or no silk in that overcoat? It might have both, might it not?

A. I should not so interpret the advertisement. If it had cotton in it I would expect cotton to be mentioned.

Q. Why?

A. Why not?

Q. Why would you expect it to be mentioned?

A. Just so the advertisement would give factual information to the reader.

Q. Does the advertisement say anywhere there is a strand of wool in that overcoat? That might be made out of rayon so far as that advertisement is concerned?

A. Absolutely not.

Q. Why?

A. If it were made out of rayon it would be extremely misleading because rayon has none of those qualities and properties that I just read.

Q. The thing that would be misleading would be to say that it is not warm, not light, not durable.

A. You only asked me as to whether or not there was anything in the advertisement that would indicate to me there might be wool in it, and I read you the statement about the laboratory tests of the Industrial Research Corporation, trying to be directly responsive to your question.

Q. The word "wool" does not appear in that advertisement, does it?

A. I do not see it.

Q. The word "hair" does not appear in it?

A. I do not see it.

Q. Just as the word "cotton" does not appear in it. Let me ask you another question, please.

Let me show you another advertisement of the same people, Commission's Exhibit No. 1-J; read that advertisement and tell me what you think is the construction of the fabric that that advertises. Pretty graphic, isn't it?

A. Yes, it is graphic. May I ask for your question.

Q. My question is, read that advertisement which is obviously on the same overcoats, the Alpacuna overcoat, and tell me what you gather from that advertisement is the construction of the fabric from which that overcoat is manufactured?

A. I gather the same thing, that it is manufactured from two animal fibers: the impression created in my mind would be an alpaca animal and a vicuña animal.

I notice particularly the statement is substantial size type, readable type.

"These two diagrams illustrate the similarity

between the Alpacuna overcoat and the animal's overcoat."

and then I noticed the illustration at the right-hand side in the box which points to the fiber Alpacuna and says,

"Blended rare animal hair fibers and fine virgin wool,"

and below that in exceedingly small type,

"Fine, Long-Staple Cotton Backing."

Q. What would you gather from that combination from your experience in these matters is the construction of that overcoat?

A. If I happened to read that small type?

Q. I am assuming you read the advertisement in full.

A. I would not be likely to read the small type if I were reading.

Q. You want to be fair in this case?

A. I want to be extremely fair. I am telling you the exact truth as to how I would read the advertisement.

Q. I am not asking you what you would be likely to read, I am asking you, having read the advertisement what would you conclude?

A. I told you I did read the advertisement and that this statement,

"Fine, Long-Staple Cotton Backing", is present in the advertisement.

Q. And you would conclude what from that as to the construction of the overcoat?

A. I would conclude from reading that particular line that you were endeavoring to explain something in connection with the manufacture of the fabric that was not otherwise conveyed by the other statements in the advertisement.

Q. Endeavoring to explain what?

A. Construction of the fabric.

Q. Construction of the fabric according to your mind

would be what? Would it not be that it had a cotton backing with hair and wool exterior?

A. Mr. Counsellor, if I read the small type it would.

* * * * (N. T. p. 238.)

By MR. McCracken:

Q. I show you another one in which it is perfectly clear that anyone can see the type,

“Fine, Long-Staple Cotton Backing,”

in the diagram, can't they?

A. My answer is: Only by close observation.

Q. Referring to the advertisement marked Commission's Exhibit 76 for identification which you clipped out of the newspaper the other day you have told us that you gathered that the word Alpacuna indicated that this overcoat was made from the hair of the alpaca and the vicuna animals, haven't you?

A. Yes.

Q. Is there anything else indicated it is made from?

A. Do you mean hair?

Q. From that advertisement, four famous fleeces: from reading the advertisement you would conclude it was not made only from the hair of the Alpaca and the Vicuna but that it was made from four fleeces, would you not?

A. I would.

TRIAL EXAMINER REARDON: Having read the advertisement, the question is, never mind anything else, having read it, what is your answer?

THE WITNESS: I would be inclined to rely on that.

By MR. McCracken:

Q. There were four fleeces and it does not name what any of the four were?

A. Yes, that is right.

Q. It does not say what any of the four are?

A. It does not show that.

* * * * (N. T. p. 240.)

IRENE CLYNES was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

By TRIAL EXAMINER REARDON:

* * * * (N. T. pp. 240, 241.)

Q. What is your occupation, Miss Clynes?

A. Stenographer.

Q. Where are you employed?

A. National Better Business Bureau, Incorporated?

* * * * (N. T. p. 241.)

Direct-examination.

By MR. WILLIAMS:

Q. You state that your position is a stenographer?

A. That is right.

Q. And you are with the National Better Business Bureau?

A. That is right.

* * * * (N. T. pp. 241, 242.)

Q. I hand you Commission's Exhibit 36 and ask you to read that, and state what meaning, if any, it would convey to you as to the fiber content of the overcoat advertised there?

MR. McCracken: I have the same objection as before.

TRIAL EXAMINER REARDON: Objection overruled.
Exception noted.

THE WITNESS: I would say that such an overcoat would be composed of Alpaca and Vicuna.

By MR. WILLIAMS:

Q. Why do you say that?

A. Because the term, itself, seems to be a combination of those two words.

Q. You say it would be a combination of alpaca and vicuna?

A. Alpaca and vicuna.

Q. Do you know what those two names represent, alpaca and vicuna?

A. I know they are animals, yes.

Q. What do you understand to be the product that is taken from 'hem'?

A. Wool.

Q. In other words, you understand alpaca and vicuna to mean wool.

* * * * (N. T. p. 243.)

Q. If you were to see this advertisement marked Commission's Exhibit 76, an advertisement of Arnold Constable what would you gather from the advertisement was the fiber content of that topcoat?

A. I read the entire ad. I would say it contained four famous fleeces, what they are I would not know: I would assume Alpaca was one and Vicuna was one.

* * * * (N. T. pp. 243, 244.)

Cross-examination.

By MR. McCRACKEN:

Q. Did you ever see a piece of cloth made out of vicuna hair?

A. Yes, I have.

Q. What kind of cloth?

A. All I know it was a wool cloth and I saw several grades, we had cuts from several grades.

Q. Pure vicuna?

A. Yes. I saw a sample of it.

Q. Uncut cloth or in a garment?

A. Just a swatch of material.

Q. Where did you see it?

A. In an exhibit we prepared about a year ago.

Q. In this case?

A. No, not in this case.

Q. Some other case?

A. It was for a conference that we had.

Q. Did you ever see a garment made out of vicuna hair?

A. No, I have not.

Q. Do you know anything about the cost of it?

A. I know it is expensive, good quality is very rare and expensive.

Q. How long have you known of the vicuna as a commercial product?

A. I think about seven or eight years.

Q. Although you have never seen a garment made of it?

A. I have never been in the market for one, it is too expensive.

Q. You have only just heard of it as a word?

A. I have seen it advertised.

Q. You do not know whether or not overcoats are actually made of it?

A. I do know that they are.

Q. But you have never seen one?

A. No.

Q. You know nothing about the cost of one?

A. I have never been in the market for one. I have seen them advertised but never paid any attention to them.

Q. You would gather from looking at that word the word was coined out of the names of those two animals, alpaca and vicuna?

A. Yes, I would.

Q. Why would you gather that, because there are only two animals whose names sound like that?

A. They are the only two animals I happen to know of in that connection and when I see that word I naturally think of Alpaca and Vicuna.

Q. There is nothing to indicate that is the only thing it speaks of?

A. There is nothing to indicate it is not the animal or animals I have mentioned.

Q. It speaks of four fleeces, does it not?

A. In that one ad.

Q. In this one ad, showing you Commission's Exhibit No. 1-I, there is a great deal to indicate that there is something else in there, isn't there?

A. Yes, if I read that.

Q. It says there is a cotton backing, doesn't it?

A. Yes, I read that.

Q. That is quite graphic and clear?

A. Yes.

* * * * (N. T. pp. 247, 249 inc.)

MISS RUTH MARSHALL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. State your name for the record, please.

A. Ruth Marshall.

Q. What is your address?

A. 23 West End Avenue.

Q. In what city?

A. New York, New York.

Q. What is your occupation?

A. Shopper of the Better Business Bureau of New York City.

* * * * (N. T. pp. 249, 250.)

Q. Suppose you were to read in the paper the advertisement here that is marked Commission's Exhibit 36; read that, examine that and state what impression you would gather from that or what would be your understanding from that advertisement as to the fiber content of the overcoat advertised?

MR. McCracken: That is objected to as heretofore.

TRIAL EXAMINEE REARDON: Objection overruled, Exception noted.

THE WITNESS: I would gather the overcoat was made of alpaca and vicuña.

By MR. WILLIAMS:

Q. Why would you come to that understanding?

A. From the combination of the words, "alpa" would mean alpaca to me and the "cuna" would mean vicuña to me.

* * * * (N. T. pp. 250, 251.)

Q. I see. Having read that advertisement I direct your attention to Commission's Exhibit No. 76 and ask you to examine that advertisement of Arnold Constable and see what you think that coat or what you would understand that coat to be composed of, gathering your understanding from that advertisement, of course.

A. It would give me the same inference, it was made

from alpaca and vicuna, and four famous fleeces from my understanding would be that it is made of wool.

Q. What would you understand it to be made of?

A. Of wool.

* * * * (N. T. pp. 251, 252.)

Q. How about the fiber content, would you believe the two coats contained the same fiber content, from the two advertisements?

A. Yes, it would be the same fiber content according to my understanding.

Q. You say you would gather it was alpaca and vicuna from both advertisements, is that the idea?

* * * * (N. T. pp. 252, 255 inc.)

Cross-examination.

By MR. McCracken:

Q. You say the first of these advertisements, Commission's Exhibit 36, conveys to your mind that the garment is made entirely of alpaca and vicuna?

A. Yes, sir.

Q. And that the second advertisement, shown you, Commission's Exhibit No. 76 conveys to your mind it is made of those two and two other famous fleeces or at least of four famous fleeces?

A. Yes, sir.

Q. And you say reading those two advertisements you would expect to find the same garment advertised in each?

A. Well, I would say my understanding would be Alpacuna would be the fabric and naturally they would be the same.

Q. Although to your mind one of them advertises it is made of two fleeces, and the other advertises it is made of four; how can you think they would be the same fiber?

A. The only point is that in Commission's Exhibit 76 you mention the fact there are four fleeces.

Q. So that it is perfectly evident there are four fleeces if that advertisement is correct?

A. If that advertisement is correct.

Q. You must be wrong in your conclusion from the other advertisement if it is the same garment that there are only two fleeces in it. There are either two or four.

A. Yes.

* * * * (N. T. p. 256.)

Q. Looking at Commission's Exhibit 1-I from certain graphic representations there it is perfectly clear they are advertising that this garment has a long-staple cotton backing, isn't it?

A. Yes.

Q. Did you come here at the request of the Better Business Bureau?

A. No, at the request of the Federal Trade Commission.

Q. You are connected with the Better Business Bureau?

A. As a part-time worker.

Q. As a part-time worker?

A. Yes.

* * * * (N. T. p. 257.)

MR. JAY GRIFFITH was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. State your name for the record, please?

A. Jay Griffith.

Q. You would gather from looking at that word the word was coined out of the names of those two animals, alpaca and vicuna?

A. Yes, I would.

Q. Why would you gather that, because there are only two animals whose names sound like that?

A. They are the only two animals I happen to know of in that connection and when I see that word I naturally think of Alpaca and Vicuna.

Q. There is nothing to indicate that is the only thing it speaks of?

A. There is nothing to indicate it is not the animal or animals I have mentioned.

Q. It speaks of four fleeces, does it not?

A. In that one ad.

Q. In this one ad, showing you Commission's Exhibit No. 1-I, there is a great deal to indicate that there is something else in there, isn't there?

A. Yes, if I read that.

Q. It says there is a cotton backing, doesn't it?

A. Yes, I read that.

Q. That is quite graphic and clear?

A. Yes.

* * * * (N. T. pp. 247, 249 inc.)

MISS RUTH MARSHALL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. State your name for the record, please.

A. Ruth Marshall.

Q. What is your address?

A. 23 West End Avenue.

Q. In what city?

A. New York, New York.

Q. What is your occupation?

A. Shopper of the Better Business Bureau of New York City.

* * * * (N. T. pp. 249, 250.)

Q. Suppose you were to read in the paper the advertisement here that is marked Commission's Exhibit 36; read that, examine that and state what impression you would gather from that or what would be your understanding from that advertisement as to the fiber content of the overcoat advertised?

MR. McCracken: That is objected to as heretofore.

TRIAL EXAMINER REARDON: Objection overruled. Exception noted.

THE WITNESS: I would gather the overcoat was made of alpaca and vicuna.

By MR. WILLIAMS:

Q. Why would you come to that understanding?

A. From the combination of the words, "alpa" would mean alpaca to me and the "cuna" would mean vicuna to me.

* * * * (N. T. pp. 250, 251.)

Q. I see. Having read that advertisement I direct your attention to Commission's Exhibit No. 76 and ask you to examine that advertisement of Arnold Constable and see what you think that coat or what you would understand that coat to be composed of, gathering your understanding from that advertisement, of course.

A. It would give me the same inference, it was made

from alpaca and vicuna, and four famous fleeces from my understanding would be that it is made of wool.

Q. What would you understand it to be made of?

A. Of wool.

* * * (N. T. pp. 251, 252.)

Q. How about the fiber content, would you believe the two coats contained the same fiber content, from the two advertisements?

A. Yes, it would be the same fiber content according to my understanding.

Q. You say you would gather it was alpaca and vicuna from both advertisements, is that the idea?

* * * (N. T. pp. 252, 255 inc.)

Cross-examination.

By MR. McCracken:

Q. You say the first of these advertisements, Commission's Exhibit 36, conveys to your mind that the garment is made entirely of alpaca and vicuna?

A. Yes, sir.

Q. And that the second advertisement, shown you, Commission's Exhibit No. 76 conveys to your mind it is made of those two and two other famous fleeces or at least of four famous fleeces?

A. Yes, sir.

Q. And you say reading those two advertisements you would expect to find the same garment advertised in each?

A. Well, I would say my understanding would be Alpacuna would be the fabric and naturally they would be the same.

Q. Although to your mind one of them advertises it is made of two fleeces, and the other advertises it is made of four; how can you think they would be the same fiber?

A. The only point is that in Commission's Exhibit 76 you mention the fact there are four fleeces.

Q. So that it is perfectly evident there are four fleeces if that advertisement is correct?

A. If that advertisement is correct.

Q. You must be wrong in your conclusion from the other advertisement if it is the same garment that there are only two fleeces in it. There are either two or four.

A. Yes.

* * * * (N. T. p. 256.)

Q. Looking at Commission's Exhibit 1-1 from certain graphic representations there it is perfectly clear they are advertising that this garment has a long-staple cotton backing, isn't it?

A. Yes.

Q. Did you come here at the request of the Better Business Bureau?

A. No, at the request of the Federal Trade Commission.

Q. You are connected with the Better Business Bureau?

A. As a part-time worker.

Q. As a part-time worker?

A. Yes.

* * * * (N. T. p. 257.)

MR. JAY GRIFFITH was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. State your name for the record, please?

A. Jay Griffith.

Q. What is your address?

A. 2 Hinckley place.

Q. In what city?

A. Brooklyn, New York.

Q. What is your ~~business~~ connection, Mr. Griffith?

A. I am a part-time worker for the Better Business Bureau.

* * * * (N. T. p. 258.)

Q. Are you familiar with the word Alpacuna or were you before you were called in this matter?

A. Yes.

Q. You had some familiarity with it?

A. Yes.

Q. What did that mean to you? Did it mean it was an overcoat?

A. Yes, it means a garment which contains the fleeces of the alpaca and the vicuna.

Q. Will you examine this paper I hand you which has been marked Commission's Exhibit No. 21 and state what it is, please.

Have you examined it sufficiently to say what that is?

A. Yes, sir.

Q. State what it is.

A. This is an advertisement for Gimbel's Store.

Q. What is the date?

A. The date is November 21, 1937.

Q. From what paper?

A. The Philadelphia Inquirer.

Q. Will you state what you would gather or understand from that advertisement as to the fiber content of the overcoat advertisement in there?

MR. McCracken: That is objected to for the reasons heretofore stated.

TRIAL EXAMINER REARDON: Objection overruled. Exception noted.

THE WITNESS: I would assume the coat is composed of the fleeces of the alpaca and the vicuna.

* * * * (N. T. pp. 259, 264 inc.)

Cross-examination.

By MR. McCracken:

* * * * (N. T. p. 264.)

Q. There is in this advertisement, Commission's Exhibit 1-I a statement to the effect that the coat has a fine, long-staple cotton backing; isn't there?

A. Yes, sir.

Q. And you would therefore conclude from reading it that it was not an all wool coat but a coat with a cotton backing, would you not?

A. If I read the small type.

Q. Assuming you read the entire advertisement?

A. Yes.

Q. Now, then, with the knowledge that that which is the overcoat was made with a cotton backing would you conclude that an Alpacuna top coat advertised in here also had a cotton backing?

A. I would not assume that this coat had a cotton backing.

Q. You told Judge Williams awhile ago having come to the conclusion the top coat was all wool that you would conclude that the Alpacuna overcoat because it bore the same name was also all wool; you told him that, didn't you?

A. I was told that they both were all wool.

Q. Judge Williams asked you this question: He said that having concluded that this was all wool from this advertisement and this coat having no lining or only a partial lining so that you could examine it on both sides, if you then bought an Alpacuna overcoat bearing the same trade name would you or would you not conclude that was

also an all wool garment as you said yes, didn't you? Didn't you?

TRIAL EXAMINER REARDON: Do you remember the testimony?

A. I did say that the Alpacuna top coats and the Alpacuna overcoats gave me the impression or it is my impression that they are both all wool.

By Mr. McCracken:

Q. And that you gathered the impression the overcoat must be all wool because it bears the same name as the top coat which you are told is all wool, that is the way you said that, is it not?

A. Yes.

Q. Having read an advertisement which, if true, disclosed to you the overcoat had a cotton backing, would you because the top coat is also named Alpacuna conclude it had a cotton backing?

A. What my opinion was then? I had not seen this at that time.

Q. I am asking you what it is now?

A. Now, it is that there is a fine, long-staple cotton backing.

Q. Now, Mr. Griffith, having read Commission's Exhibit 1-I, and having discovered, if that advertisement is true, that the overcoat has a fine, long-staple cotton backing, would you jump to the conclusion the top coat had the same, because it bears the name Alpacuna?

A. I would until I saw this.

Q. You would until you saw what? You would come to what conclusion?

A. They were all all wool until I read this very small type here.

Q. Now, would you conclude they were both partly cotton; would you not?

A. Yes.

Q. And yet isn't it quite possible, don't you know as a fact that those advertisements are correct and that the overcoat has a cotton backing and the top-coat has not, you know that as a fact, don't you, from examining the garments, and yet they are both called an Alpacuna garment, you know that, don't you?

A. Yes.

* * * * (N. T. pp. 267, 268.)

Re-cross-examination.

By MR. McCracken:

Q. Did you ever see any of the garments represented by these various trade names that I now show you in respondent's Exhibits 1 to 23? Have you studied any of these?

A. I have heard Valcuna.

Q. Valcuna, Rockuna, Macuna, Lacuna, you have not been detailed to study any of those; you have been only sent out to look out at Alpacuna, is that it?

A. Yes.

Q. So far as cunas are concerned?

A. Right.

Q. What do you know about Valcuna?

A. I have just seen the trademark on things.

Q. Does that carry any significance to your mind as to what it is made of?

A. Yes, that one of the fleeces is vicuna.

Q. And the other is I suppose is Wagner's Die Walkure?

A. I would not go on record as saying that.

Q. What would it be?

A. It is just something I would not be familiar with, that particular fleece.

* * * * (N. T. p. 269.)

ROBERT M. CAMPBELL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. State your name for the record, please.

A. Robert M. Campbell.

Q. What is your business connection and address?

A. I am with Rogers Peet Company at 842 Broadway, New York, New York.

Q. What type of store is Rogers Peet?

A. Men's and boys' outfitters.

* * * * (N. T. pp. 270, 271.)

Q. Are you familiar with the various wools or what are commonly referred to as wools?

A. I think so.

Q. Are you familiar with alpaca?

A. I am.

Q. Are you familiar with vicuna?

A. I am.

Q. And so on?

A. Yes.

Q. Will you look at this advertisement which is marked Commission's Exhibit No. 30, and state what impression you gather from that advertisement irrespective of what you may literally know about the coat?

And from the content of that coat would be made with that fabric.

MR. McCracken: Objection as heretofore.

TRIAL EXAMINER REARDON: Objection overruled and exception noted.

By MR. WILLIAMS:

Q. What understanding would you gather from that advertisement as to the fabric or fiber content of that coat?

A. Being in the trade I can only come to one conclusion that it is made from wool taken from the two animals referred to.

Q. What animals?

A. Alpaca and vicuna.

Q. In other words, the word Alpacuna means to you alpaca and vicuna?

* * * * (N. T. pp. 272, 274 inc.)

Cross-examination.

By MR. McCracken:

Q. Do you know the Alpacuna overcoat aside from these advertisements?

A. Naturally, being in the job I am, naturally we know what the other people are showing.

Q. It is a large selling overcoat?

A. Yes.

Q. You do know it has a cotton backing?

A. I assume so.

Q. There never has been any attempt to conceal it, has there?

A. No.

Q. As a matter of fact you are familiar with a diagram in which the cotton backing is displayed as a substitute for an animals skin?

A. Yes.

Q. There has never been an attempt to conceal it?

A. Not to my knowledge.

Q. And there is not any warranty it is a wool coat in the face of that?

A. Not that I know of.

Q. The reason you would conclude it would contain hairs of the alpaca and the vicuna was because you had been for many years in the wool trade and you know what those animals are and what their fleeces are?

A. Yes.

Q. You said you did not know what the man in the street would conclude?

A. Yes.

Q. Suppose you were to go downstairs and subpoenaed the first fifty people that would pack this building and brought them up here you would not be surprised if five out of fifty would know what the words, Vicuna, Alpaca, and Alpacuna meant?

A. Probably not five out of fifty would know.

* * * * (N. T. pp. 275, 276.)

PASCAL R. BIANCARDO, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. State your name for the record, please.

A. Pascal R. Biancardo.

Q. What is your address?

A. 57 Fifth Avenue.

Q. In what city?

A. New York, New York.

Q. What is your business?

A. Business? I aim to be a playwright by avocation. I work for the Better Business Bureau as an occasional job. Last week I made forty-five cents, to show how little I make.

Q. Do you know anything about the word Alpacama?

A. Only that I have heard of it recently in the last say ten days.

Q. You were not acquainted with it before?

A. No.

* * * * (N. T. pp. 276, 277.)

Q. What if anything do you know about the alpaca and the vicuna or animals such as that?

A. One dictionary tells me the vicuna is a goat-like animal and another told me it was a camel-like animal and the alpaca is also a camel-like animal; both live in South America. The vicuna is very rare and is almost extinct because of so much pulling for getting the wool.

Q. That is a very good description I would say. What acquaintanceship with those have you had before you made a dictionary examination?

A. Only generally, I knew both were wool bearing animals from South America, in a class with the llama; the llama, the alpaca and the vicuna, I knew those three in general.

Q. You had known of those before?

A. Oh, yes.

Q. Are you familiar with the alpacuna overcoat?

A. I have never seen one.

Q. Do you know the contents of the coat, alpacuna coat?

A. No.

Q. You do not know what the content is?

A. No.

Q. Suppose you look at Commission's Exhibit No. 30, an advertisement of Kann's. Examine that and state what your impression and understanding would be as to the fiber content of that coat?

A. From the ad. itself, I would assume, it is nowhere said it is wool but the name I would take as a coined name deliberately manufactured by the manufacturer to give the impression it is made of alpaca and vicuna wools.

* * * * (N. T. pp. 278, 279.)

Cross-examination.

By Mr. McCracken:

* * * * (N. T. pp. 279, 280.)

Q. When did you first get interested in this investigation of alpacuna?

A. I received a letter by United States Mail from George W. Williams of the Federal Trade Commission asking my impression of the word alpacuna, what did that denote, or what came to mind when I heard that word.

Q. Upon receipt of that letter may I ask what you did?

A. I sat down at my typewriter and wrote a reply stating more or less what I have said here, Alpacuna brought to mind two animals, South American ruminant animals, quadrupeds of South America, which were wool bearing or that is the hair was known as wool generally and that the combination of this word Alpacuna was a fabricated word or compound words made to suggest these two particular animals.

Q. Before you wrote that letter did you take a little excursion to the two dictionaries?

A. No.

Q. When did you take that excursion?

A. I did later at the library.

Q. After you wrote the letter?

A. That is right. He asked me my impression of the word.

Q. Prior to the time you received that letter did you know anything whatever about the investigation?

A. No, sir.

Q. That letter came out of a clear sky?

A. That is right.

Q. And you replied, and then later looked up the material to make the reply?

A. I replied, and later I sent the reply, but that reply had already been mailed.

Robert Murphy—Direct.

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Q. Would you mind telling us when you got that letter, how long ago?

A. Yes, last week, probably about the 18th or 19th.

Q. Did you inquire from Judge Williams as to how he got your name?

A. He got it from the Better Business Bureau.

MR. McCracken: That is all.

* * * (N. T. p. 282.)

ROBERT MURPHY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. State your name for the record, please?

A. Robert Murphy.

Q. What is your address?

A. 176 Rutland Road, Brooklyn, New York.

Q. What is your occupation?

A. I am a part-time for the Better Business Bureau of New York.

Q. You were contacted in the same sort of circumstances that Mr. Biancardo was, I believe?

A. Yes, I was.

Q. Are you acquainted with the word Alpacuna?

A. Yes, sir, I am now.

Q. Were you before this inquiry?

A. Not before I received your letter, sir.

Q. Were you acquainted with the alpaca and the vicuña?

A. Yes, sir, I was.

Q. Where did you get that acquaintanceship?

A. In grammar school geography, the study of the geography of South America.

Q. That is studied in grammar school?

A. Yes.

Q. In what connection, what study?

A. Geography.

Q. Physical geography?

A. Just geography.

Q. Those animals were represented in your book?

A. Yes, sir, they were.

Q. And generally taught to students?

A. Yes, sir.

Q. Will you look at that advertisement marked Commission's Exhibit 36 and state what you gather from it, what is your understanding as to the fiber content of the coat advertised there?

A. It is my impression that the word Alpacuna is derived from the alpaca and the vicuña and the coat is made from the wool from the fiber of the two animals, and therefore, wholly wool.

Q. I hand you Commission's Exhibit No. 76 advertising a top coat. State what impression you gain from that as to the fiber content?

TRIAL EXAMINER REARDON: Do you have the same objection?

MR. McCracken: Yes.

TRIAL EXAMINER REARDON: I make the same ruling and give you an exception.

THE WITNESS: I would say my opinion was revised and the alpacuna overcoat contains four fleeces where I understood it contained two before.

By MR. WILLIAMS:

* * * * (N. T. pp. 284, 286 inc.)

Q. All right. Now, the first thing you heard about this was a week or ten days ago when you got a letter from Mr. Williams?

A. Yes, sir.

Q. You had not made any particular study prior to that of these animals?

A. No, sir, I did not.

Q. You never bought a vicuna coat, did you?

A. No.

Q. Did you ever see one?

A. No.

Q. Did you ever hear of an alpaca coat?

A. Yes.

Q. Have you ever heard of anybody buying an alpaca coat as such?

A. No, I have not.

Q. What do you mean, you say you heard of one?

A. I have heard people speak of alpaca coats, and I have heard of people buying them, but I do not know anybody who has bought one.

Q. Was that an alpaca coat you heard of?

A. An overcoat.

Q. That men use in offices?

A. I doubt that men work in offices could afford them.

Q. I will ask you this specifically in reference to an alpaca coat, did it mean a light coat that men use in offices in order to save their other suit clothes or good suits?

A. It meant an overcoat to me.

Q. Overcoat, and you have actually seen one?

A. No, I have never seen one.

Q. Did you inquire while you were making these inquiries as to just what kind of an overcoat an alpaca and a vicuna might make if you joined them?

A. No, I did not.

Q. What did you make inquiry about?

A. I did not make any inquiries about anything.

* * * * (N. T. p. 287.)

Q. After you got the letter from Mr. Williams you answered that letter?

A. I did.

Q. And what you have testified here now is what you know about alpaca and or anything that has anything to do with these coats; is that right?

A. Yes.

* * * * (N. T. pp. 288, 289, 290.)

KENNETH B. WILLSON was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. State your name for the record, please.

A. Kenneth B. Willson.

Q. What is your address and your business connection?

A. I am with the National Better Business Bureau, Incorporated at 405 Lexington Avenue, in New York City.

* * * * (N. T. pp. 290, 291.)

Q. Are you familiar with the word vicuna?

A. Yes, sir.

Q. What connection has that in the textile field, if any?

A. In the textile field vicuna is the name of a fabric or of a wool or both.

Q. A wool?

A. A wool or a fabric or both.

Q. What is your understanding of that, what does that word mean definitely as far as you are concerned?

A. It means the name of an animal or the wool or hair derived from the animal and the fabric derived from the wool.

Q. How about Alpacuna, what does that mean to you?

A. Alpacuna suggests a trade name to me, it is suggestive of a combination of fibers of the alpaca and the vicuna.

* * * * (N. T. pp. 292, 293.)

Q. Are you able to state at all as to what if any acquaintanceship the public has with this vicuna and these wools from your experience?

A. Well, the word vicuna had been advertised in this city at least, and there is in the library a very fine treatise on the subject, I understand it is in all libraries.

Q. By whom?

A. I refer to a booklet or pamphlet written by Sylvan I. Stroock.

Q. Who is Mr. Stroock, if you know?

A. He is a manufacturer of fabrics, of specialty hair fabrics, particularly.

Q. Including the vicuna?

A. Including the vicuna.

Q. And you say there are text books of one kind or another to your knowledge in the libraries?

* * * * (N. T. p. 294.)

Cross-examination.

By MR. McCracken:

Q. Mr. Willson, you say that it is your practice to study advertising with a view to requiring that it could be or accomplishing the end it should be truthful only; that is one of the main purposes of the Better Business Bureau?

A. That is true, although I should qualify that; the

local Bureaus, particularly check advertising, the National Bureau particularly acts on complaints.

Q. You also say that when you receive a complaint the first practice is to take it up with the advertiser and try to arrive at an accommodation or adjustment?

A. That is true.

Q. Have you received such a complaint concerning Alpauca?

A. We received no complaint alleging that the name was misleading.

Q. Therefore, of course, you did not take the matter up with the advertiser?

A. We did not question the firm.

Q. There was nothing to take up with them?

A. No.

Q. You are here I presume under subpoena from the Federal Trade Commission to answer the questions that are put to you here?

A. Yes, sir.

Q. That trade name is about ten years old, is it not? It has been so testified in this case.

A. I have seen it for a number of years.

Q. The Better Business Bureau has been functioning during that period?

A. That is true.

Q. And it is a widely advertised trade name as appears from this testimony?

And yet, in all that time you have received no complaint of its misleading character as you just said?

A. That is true.

Q. It is a fact, is it not, that the term vicuna while known to you as an expert in these matters is not a well known item to the general mass of people?

A. I believe so.

Q. You mean it is known?

A. Not widely known as let us say wool.

Q. It is also true the term is applied, as you so ac-

enurately describe it, to fabrics manufactured from wool or hair, is applied to imitation fabrics, as well as to those made out of the pure vicuña wool?

A. It has been in several instances that I know of and we have received complaints about that.

* * * * (N. T. pp. 296, 297.)

By MR. McCracken:

Q. The John B. Stetson Company have registered a tradename "Stetson Vicuña" which is described in the registration as clothing and the particular description of goods comprised in said class upon which the tradename is used is hats and caps for men, women, and children. Are you familiar with this?

* * * * (N. T. p. 297.)

Q. You are not familiar with that?

A. No.

Q. You do not know whether or not the hats that the Stetson Company undertook to sell under that tradename are or are not manufactured of vicuña hair?

A. No, sir, I have no knowledge concerning that trademark.

Q. Did you ever see a hat manufactured of vicuña?

A. No, sir.

Q. You have not seen any garments manufactured of it, as a matter of fact?

A. No, sir.

Q. It is a very rare hair?

A. Yes, sir.

Q. I suppose there is an admixture of it in some products, or do you know that?

A. I know we have received complaints alleging mis-use of the term vicuña in one form or another and in coats containing no vicuña.

Q. Not referring to the Siegel Company which uses the term "alpacuma"?

A. We have had no complaint against the Siegel Company.

* * * * (N. T. pp. 298, 299.)

By MR. McCracken:

Q. Just examine those, if you please, and tell us what is disclosed in those sketches or diagrams.

A. The diagrams as I interpret them endeavor to portray graphically the similarity between alpaca construction and the construction of the animal fiber, itself, on the back of the animal and alpaca hair is described in rather small type saying what the backing is, it is made of fine, long-staple cotton.

Q. That is a perfectly clear description of the fabric, as containing a long-staple backing, is it not?

A. It is clear, but it certainly in small type.

Q. There is more than the type, there is a nice drawing there that speaks for itself and everybody can see the type that wants to.

A. Anybody who wants to read all the wording there can read that.

Q. You would not say that advertisement has concealed anything?

A. We would say that the fibers should be disclosed with equal prominence.

Q. In other words, you complain of the size of the type down there, that is all you complain of in that advertisement?

A. In that particular illustration.

Q. Yes, you say that that is too small. How about the one to the left?

A. That is a little better but it still is not in the same size type nor is it displayed on a plane of equal conspicuousness with the names of the other fibers.

* * * * (N. T. pp. 300, 301.)

Q. There is nothing deceptive in those advertisements, they disclose what is there?

A. We would hold it is defective not to reveal the fibers present with equal conspicuousness.

Q. Would you complain of those advertisements, now, really?

A. We did not complain about them, we did not get any complaint about them.

Q. And you would not complain about them?

A. Many of the local Bureaus have complained to their merchants requesting that they disclose the fibers with equal conspicuousness, that is one of the cardinal rules of the Better Business Bureau.

* * * * (N. T. pp. 301, 306 inc.)

Re-direct-examination.

By MR. WILLIAMS:

* * * (N. T. pp. 306, 308.)

Q. And in one of those two advertisements that Mr. McCracken showed you a moment ago you say that warmth and these other features were emphasized; would you associate cotton with an extraordinary warm garment?

A. Up until a year or so ago I would not, but I understand that weave is more important today or as important as fiber.

* * * * (N. T. pp. 308, 309.)

Re-cross-examination.

By MR. MCCracken:

Q. Do you know anything about this overcoat, Mr. Willson, as a piece of merchandise?

A. No, sir.

Q. Have you ever examined one?

A. No, sir.

Q. Do you know anything about the fact which has,

recently been established that a closely woven cotton backing serves as a wind break, rendered the garment warmer than an all wool garment?

A. I know studies have been made of fibers to show their relative warmth, not on this particular garment, however.

Q. It might readily be true that a new discovery of that nature would result in a warmer garment and that it might take years to persuade a public which knows only the usual difference between wool and cotton; yet there might readily be one.

A. I believe that, yes, sir.

• • • • (N. T. p. 310.)

MISS IRENE LINK was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

• • • • (N. T. pp 310.)

Q. What is your address?

A. 328 East Sixty-sixth street.

Q. In what city?

A. In New York City.

Q. What is your business connection or avocation?

A. I am a shopper for the Better Business Bureau at 280 Broadway, in New York City.

• • • • (N. T. p. 310.)

Q. Are you acquainted with the word Alpacuna?

A. No, I am not.

Q. You are not acquainted with that word?

A. I am now but I mean previous to my shopping I was not.

Q. What was the occasion of your becoming acquainted with that word?

A. I was sent out by the Better Business Bureau to find out about these top coats that were advertised, Alpacuna top coats, I was asked to find out the meaning of the word Alpacuna.

The advertisement also said that the coat, the fabric content of the coat contained four different famous fleeces and I was merely sent up to get the salesman's representation of what the four different famous fleeces were and what the term Alpacuna meant. That was all that was attached to my job.

Q: What did you do as a result of that?

A. I went up to Arnold Constable to the second floor and a dark man approached me and I explained to him I wanted to see the Alpacuna top coats. He had Mr. Weintraub a salesman attend to me.

* * * * (N. T. p. 311.)

Mr. Weintraub showed me three or four of these coats. I asked him what the four famous fleeces contained in the fiber content were and he said, "Camel's hair, mohair, alpaca and llama," and there was a picture of the llama on the silk label inside the coat.

So I said, "Well, where did the word Alpacuna originate or how did it originate?" He said, "Well, there is a small portion of vicuna in the coat". So I said, "Then there are five famous fleeces".

Without answering that question Mr. Weintraub told me what a wonderful buy the coat was, how light it was and the warmth in the coat and I thanked him, told him I would send my son in later and I left. That is all.

* * * * (N. T. p. 312.)

Cross-examination.

By MR. McCracken:

Q. Before you started out on this, Miss Link, did you

think over the word Alpacuna? You had never heard of it before?

A. No, I did not.

Q. What did it mean to you when you first heard it?

A. It did not mean anything until I asked the salesman.

Q. Had you any knowledge of what these animals were before you went down there?

A. No, I did not.

Q. When he told you what they were, were you familiar with the animals?

A. When he told me the content of the coat? I know camel's hair and llama and mohair, but—

Q. Did you ever hear of a vicuna before you went there?

A. No, I did not.

• • • • (N. T. p. 313.)

Testimony for Respondent Below.

DAVID WEINTRAUB was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Did you hear Mrs. Link's story?

A. I did, yes.

Q. Did that relate the facts?

A. I do not remember saying the fibers the lady spoke of.

Q. State in a few words, what your story is.

A. I do not remember the lady in the first place, and in the second place if I was selling I would not use any other language to describe the overcoat than a cotton back hair cloth and wool, and the top coat as a wool and hair coat.

Q. You did not go into the various South American animals?

A. I did not.

* * * * (N. T. p. 314.)

Cross-examination.

By MR. WILLIAMS:

Q. Mr. Weintraub, you say you do not recollect talking to the lady at all, and secondly you did not know what the actual composition of that coat was as to the fibers?

A. All I know of the overcoat is that it has a face of a hair cloth and wool and a cotton backing.

Q. But you do not know what hair cloth and wool?

A. No.

* * * * (N. T. p. 315.)

Testimony for Commission.

MARKHAM HARRIS was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

* * * * (N. T. p. 315.)

Q. State your address and business connection.

A. I am with the Grolier Society, 2 West Forty-fifth Street, New York, New York.

Q. What is the business of the Grolier Society?

A. The Grolier Society are the publishers of the Book of Knowledge.

* * * * (N. T. p. 316.)

Q. State whether or not your books deal with such South American animals as the vicuna?

A. Yes.

Q. Will you give the pages?

A. There is an entry in the Encyclopedia Americana for that South American animal on page 76 of volume 28 of the Encyclopedia Americana.

* * * * (N. T. pp. 316, 317.)

Q. That is the reference in the Encyclopedia Americana. What reference have you, if any, in your Book of Knowledge?

A. The one we located in the Book of Knowledge concerns I think principally the Llama and his hair and the picture is over there.

* * * * (N. T. p. 317.)

Q. Is there any other reference in your books in reference to these animals?

A. Yes, there are others. This is a reference to the alpaca.

TRIAL EXAMINER REARDON: What is that reference?

MR. McCRACKEN: This is from the Encyclopedia Americana, page 435.

THE WITNESS: This is also in the Encyclopedia Americana, a reference to the animals, the llama.

MR. McCracken: Referring to volume 17, page 511.

* * * * (N. T. p. 318.)

There is a reference in the Book of Knowledge, Volume 5, page 1604.

* * * * (N. T. p. 318.)

Q. The Encyclopedia Americana to which you have referred here is what edition?

A. I think that would be 1938, possibly 1939; this is the 1939 edition.

Q. 1939?

A. Yes.

* * * * (N. T. p. 318.)

Q. What field is this Book of Knowledge generally supposed to cover?

A. The Book of Knowledge is the children's encyclopedia, a juvenile encyclopedia.

* * * * (N. T. pp. 318, 322 inc.)

VICTOR S. RIESENFELD was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

* * * * (N. T. p. 323.)

Q. What is your address and business connection?

A. I am with Cohen, Goldman and Company, 45 West Eighteenth Street, New York, New York.

Q. What is their business?

A. Clothing manufacturers.

Q. What types of clothing do you manufacture?

A. We make suits and overcoats.

Q. What is the price of those overcoats?

A. Our overcoat is sold at forty dollars, the overcoat that is advertised.

* * * * N. T. pp. 323, 324.)

Cross-examination.

By MR. McCracken:

Q. Do you know the name Alpacuna?

A. Yes, sir.

Q. What does that name signify to you?

A. It signifies a lot more to me this morning than any other time.

Q. Up to yesterday what did it signify?

A. Frankly, it did not register particularly to me because the principal thing that registered with me in the name was alpaca. I have heard about vicuna this morning, pro, con, and inside out, and I would say vicuna is a very rare wool.

TRIAL EXAMINER REARDON: This is what you learned this morning?

THE WITNESS: No. I would say the combination of alpacuna from this morning's connotation would be a combination of alpaca and vicuna. Up to this morning I did not give it any thought or connect the two.

* * * * (N. T. p. 325.)

Q. Had you ever heard anybody else say anything

A. I have never heard anybody else discuss it.

Q. You know the overcoat?

A. Yes.

Q. It is a well known overcoat?

A. Yes.

Q. Do you know what its composition is?

A. I have always known it is a cotton back and I assume it has alpaca in it, that is a very common overcoat wool used in the industry.

* * * * (N. T. pp. 326, 328 inc.)

MAX R. ULLMAN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

* * * * (N. T. p. 329.)

Q. State your address and business connection?

A. Care of Ullman Brothers, 79 Fifth Avenue, New York, New York.

Q. What is your business?

A. I am a manufacturer of top coats and overcoats.

* * * * (N. T. p. 329.)

Q. Do you sell them in other states than New York?

A. Yes, sir.

Q. And do you ship them to customers in other states than New York?

A. Yes, sir.

Q. Name one.

A. Pennsylvania.

Q. What is the fabric of your overcoats?

A. We make all wool overcoats and we also make a cotton back overcoat.

Q. What is the name of your cotton back overcoat?

A. We call it Andecuna.

Q. Where was that name fabricated or from what was it fabricated?

A. I would not say it was fabricated.

Q. Is it a coined word?

A. Coined? Well, we just took it out of the sky, I would say it really represents nothing, it is not registered, we do not use it as a tradename.

Q. As a matter of fact, doesn't it come from Andes?

A. Presumably so.

Q. Also the cuna might have come from vicuña; you must have got it from somewhere?

A. We coined it from the animal.

By TRIAL EXAMINER REARDON:

Q. Did you have anything to do with formulating that name?

A. No, sir.

Q. Do you know who had anything to do with formulating that name?

A. My sales manager.

TRIAL EXAMINER REARDON: I think he is the one who should answer that question.

By MR. WILLIAMS:

Q. Did he do that in collaboration with you?

A. Somewhat.

Q. You know about it?

A. Yes.

Q. What is the derivation of that coined compound word?

A. I should say the first part comes from the name—Ande, comes from the Andes Mountains where the goats are whose hair is used in the face of the coat.

Q. What is the name of that goat to which you refer?

A. Any goat that is raised on the Andes mountains.

Q. How about cuna, what does that connote?

A. Cuna I would say would be more or less of a coined name, I would not say it applies to any particular fiber or animal.

Q. You do not know the vicuna?

A. I know that.

Q. Don't you know that is where you got that vicuna part from?

A. I beg your pardon, I did not get it from that.

Q. It is c-u-n-a (spelling)?

A. That is right.

Q. You say you don't know, yourself, where it came from?

A. We just used a contraction.

Q. Of what?

A. Of Andes and cuna.

Q. What is it a contraction of, can you tell me?

A. You take any animal, you can use any animal at all and call it a cuna, there is no such animal and no such word.

Q. There is an animal called vicuna.

A. Vicuna, we were not thinking of that when we thought up the name of Andecuna.

* * * * (N. T. p. 332.)

Cross-examination.

By MR. McCracken:

Q. The cotton back coats, of course, you do not represent to be wool?

A. No, sir, we call it cotton back.

Q. Isn't it a fact that a good many names of overcoats known throughout the country as your name does in cuna?

A. Yes, sir.

Q. By Ancuna, Macuna, and Rockuna, and a lot of others?

A. That is right.

Q. Is it not a fact that all of these coats which begin and end in cuna have a cotton backing so far as you know?

A. Yes.

* * * * (N. T. pp. 333, 351.)

JEROME SAKS was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

* * * * (N. T. p. 351.)

Q. Will you please state your address and business connection, sir?

A. 610—Twelfth Street, Saks' Fur Company.

* * * * (N. T. p. 351.)

Q. What sort of business do you do, Mr. Saks?

A. Furs and cloth coats.

* * * * (N. T. pp. 351, 352.)

TRIAL EXAMINER REARDON: On the record.

You are showing the witness Exhibit No. 49, as I understand it?

MR. WILLIAMS: Yes, Commission's Exhibit No. 49.

By MR. WILLIAMS:

Q. And I ask you to look at that advertisement and tell us what it is, and what, if anything, it conveys to you of the fiber content of the article advertised.

A. Well, I wouldn't say this contained anything as to the fiber content.

Q. I say, what is implied to you as to fiber content?

A. This word (indicating)?

Q. (Mr. Williams nodding his head.)

A. In my opinion, it would be something pertaining to this animal or these animals, either an imitation of or part of them; some treatment of them.

TRIAL EXAMINER REARDON: What animals do you refer to?

THE WITNESS: Alpacuna.

TRIAL EXAMINER REARDON: Is alpacuna an animal?

THE WITNESS: You say is it an animal?

TRIAL EXAMINER REARDON: Yes.

THE WITNESS: No, I have never heard of the animal. I have heard of the cuna and vicuna.

TRIAL EXAMINER REARDON: Of course, pertaining to—

THE WITNESS: Pertaining to those animals.

By MR. WILLIAMS:

Q. Well, with that word as it stands there, alpacuna—

A. Yes.

Q. What does it convey to you as to fiber content?

A. Well, I would say it contained some idea or some part of these animals, or some treatment of the animals.

Q. And you would expect, as I gather, you would expect to find some vicuna in that coat?

A. Well, not necessarily. It is either an imitation of, or a treatment of the animal.

Q. Well, why do you put a limitation on it? If an advertisement is supposed to advertise fairly—

A. What?

Q. —it is supposed to tell the public the truth.

A. Yes.

Q. All right.

What two animals does that refer to, in your judgment?

TRIAL EXAMINER REARDON: I don't see—it is leading.

A. Alpaca and vicuna.

Q. What would be the impression as to fiber content?

A. Well, that it would pertain to those animals, in my opinion, but not necessarily be a part of them.

* * * * (N. T. p. 354.)

THE WITNESS: Can I state further that seeing the price of this garment, I would imagine or know that it wasn't part of an animal, because I am somewhat familiar with the price of those coats.

By MR. WILLIAMS:

Q. Are you the same Mr. Saks that wrote me a letter dated October 6th, in reply to a letter of mine?

A. Yes, sir.

Q. Why do you say that, then?

A. Well, because we handle a certain type of cloth coat that contains vicuna and I know it is a much higher-priced coat; I personally know that.

Q. Well, do you mean there couldn't be five percent of vicuna in there, of some kind of vicuna hair, or hair or wool?

A. Well, there could be part of it.

Q. Well, that is what I am asking you. I am not asking you whether it contained wholly that.

A. Yes, hair or wool.

Q. But I am saying would you expect to find some vicuna hair in there, or wool, as you choose to call it?

A. Yes; I would say so.

Q. And as I gather from what you just now said, you wouldn't expect to find a wholly vicuna coat?

A. Very little of it.

Q. But at least, you would expect to find some; is that correct?

A. Well, as I said before, something pertaining to it, or part of it.

Q. I don't just know what you mean by "pertaining to it". What do you mean by that?

A. Well, maybe I can make it clearer. I would say to look like the hair of the animal.

* * * * (N. T. pp. 355, 356.)

Q. Taking that ad on its face, do I understand you to say that you would expect to find some vicuna in it, or not?

TRIAL EXAMINER REARDON: Well, he has already said you would.

THE WITNESS: I wouldn't necessarily say you would find some in there; I would say something pertaining to it or that would look like it.

TRIAL EXAMINER REARDON: He said that before.

THE WITNESS: I couldn't determine, looking at that, whether there was a small percentage.

By MR. WILLIAMS:

Q. I didn't ask you to determine that. I asked you what conclusion you would draw, or a reasonable person would draw. I am asking you what conclusion you would draw—not what it actually contains—but what conclusion you would draw that the fiber content of that is.

A. I couldn't answer that.

* * * * (N. T. pp. 357, 358.)

Cross-examination.

By MR. McCracken:

Q. Mr. Saks, if I understand you correctly, your inter-

pretation of the word "alpacuna" is that it is a coined word, to start with?

A. Yes, sir.

Q. There is nothing in the advertisement before you that refers to either the alpaca or vicuna as such; there is no mention of either animal in that advertisement, is there, as such?

A. No.

Q. And you understand, you do not gather from the coined word "alpacuna" any warranty by the manufacturer that that garment contains either true alpaca or true vicuna hair?

A. No.

* * * * (N. T. pp. 358, 359.)

ARTHUR LEVY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

* * * * (N. T. p. 359.)

Q. Mr. Levy, what is your business connection?

A. Clothing buyer.

Q. What is the establishment?

A. Raleigh Haberdasher.

Q. What is the address?

A. 1310 F Street, Northwest, Washington, D. C.

* * * * (N. T. pp. 359, 361 inc.)

Q. Would you look at this paper marked Commission's Exhibit No. 49, and tell us what you gather from that as to fiber content of anything as to the article advertised.

A. It doesn't tell me anything about fabric.

Q. About fiber content, I mean.

A. It doesn't tell me anything.

Q. You mean the word there—

A. It is a trade name, that is all I know.

Q. What is a trade name made from?

A. It is made from alpaca and vicuna.

Q. I am asking you what you understand it was made from?

A. It is a coined word. If you are referring to the animals the hair comes from, it may be that; but this particular advertisement doesn't tell me that the cloth that article is made of contains that particular hair.

Q. What indication, if any, do you get as to that?

A. Well, it doesn't tell me anything—it is just a name.

• • • • (N. T. p. 362.)

Q. Then, as I understand you, your understanding is that these names used in connection with garments used, for instance, llama, wouldn't mean anything?

A. The word "llama" does. If I was buying something with the word "llama" in it, I would assume it contained some llama.

Q. Well, if you bought something partly llama?

A. I would assume it may be a coined word but it doesn't necessarily mean it contains llama, even though the coined word has "llama" in it.

Q. Is that your idea of false advertising?

A. No.

Q. Then, as I understand, it is customary to use in the business words which have a definite meaning to the public

A. I don't know how the public would construe it.

Q. Oh, you don't know how the public would construe it?

A. They don't question the contents of cloth.

Q. Supposing somebody would ask what the content

of those two words was—alpaca and vicuna—the derivation of those two words.

A. Do you mean if a customer asked me when I am selling it?

Q. I mean the public when they found coined two words of fur-bearing animals.

A. I don't think the public would.

• • • • (N. T. pp. 363, 364.)

Cross-examination.

By MR. McCracken:

Q. This is a very well-known word?

A. To me it is.

Q. And it is well-known to the trade?

A. Yes, sir.

• • • • (N. T. p. 364.)

W. B. GARNISS was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name and business connection?

A. Garniss. I am the buyer at Saltz Brothers, 1341 F Street.

• • • • (N. T. p. 364.)

Q. What is the type of business that you conduct, sir?

A. Clothing—clothing and furnishings.

• • • • (N. T. p. 365.)

Q. Will you read the advertisement marked Commission's Exhibit No. 49, and say what you gather from that as to the fiber content of the article advertised.

A. Well, in looking over an ad of that kind, I would have to be impressed by a little more of one word. This word is split up. It is a coined word, but I would, in my own estimation—the word “alpaca” would dawn on me the first word; and I would say the word “vicuna” was altered, which would give me the impression of two different pieces of goods.

Q. Yes, sir?

A. Now, we know that the alpaca is an animal very similar to the llama—very similar to more of a fleece-bearing animal. Its hair is longer than the llama, but I am not familiar with the cost price of llama wool. I know that vicuna is a very expensive material, running anywhere from \$15, maybe to \$80 a yard, and if I read this article at \$40 I would say that there would be very little vicuna in it, and it wouldn't impress me as being any part of vicuna. But I would think there would be the wool of the alpaca—that is the first slant I would get on it. And I would say there would be more alpaca wool, and I would just forget about the vicuna end of it.

Q. Would you expect to find some vicuna, with that word?

A. Well, if I was a salesman on the floor, this is a study of cloth—if I was a salesman on the floor and a man has got to know from a study of the cloth what he is talking about, and after finding a vicuna cloth that is \$75 a yard—I have a swatch of it here, at \$60 a yard, but I wouldn't expect to find but only a very small portion of it.

Q. Would you expect to find some vicuna?

A. If I saw the word “vicuna” there, I would, to some extent.

Q. Well, that word “alpacuna”—would that lend itself to misuse?

A. I would be more taken in as alpaca.

Q. Yes?

A. As an alpaca wool. If that coat was marked \$150 there, then I would get a better idea of both textures used.

Now, I have sold lamamara coats and then we have another one, lamgora—they have had four or five different names, and they are all what they call coined names for selling purposes. For selling purposes one store will sell it for \$35 and another \$40 and go up to \$85.

Now, last year I had one I sold for \$85 and ordinarily they go up to \$150.

Q. Would that advertisement lend itself to being vicuna?

A. This impresses me as being an alpaca coat, individually.

. . . . (N. T. p. 367.)

Q. Well, does that advertisement lend itself to that construction if a person selling it would care to emphasize vicuna?

. . . . (N. T. pp. 367, 368.)

A. No. It wouldn't impress me as a vicuna coat, but I would be impressed that it was alpaca, which is a wool content.

By Mr. WILLIAMS:

Q. There is some vicuna in it?

A. If there was, it would be a very small part of it.

. . . . (N. T. pp. 368, 369.)

Q. From that advertisement, what would you expect to find—an all-wool coat or some composition of some other kind?

A. Well, I would take it there would be more of the alpaca wool, which would be more of a fleece; and it would sell for \$30; when you get down to \$35, there is a lot of difference in coats. Some are turned out by machine and they put them out in mass production by machine.

Q. Well, taking the advertisement itself from which the public is assumed to buy from, I assume why they put that in the paper—would not a person reasonably conclude that that is a wholly wool coat?

A. I would say that it would be an alpaca. Some manufacturers would charge \$8 to make that coat under mass-production prices. Price don't always mean anything; it is the construction that counts.

Q. I am asking you to read it from the four corners, and I understand you to say that it is a wholly wool coat?

A. Well, in alpaca, it is naturally warm and silky—I have that in a book over there. It refers to the alpaca.

(N. T. pp. 370, 374 inc.)

Cross-examination.

By Mr. McCracken:

Q. Mr. Garniss, you were shown some very pretty photographs here, which were said to be of the window of Kann's Store, in Washington.

A. Yes.

Q. And I show you an advertisement in the Washington Evening Star, Monday, December 4, 1939, of the alpacuna overcoat, and call your attention, and ask you whether any one reading that advertisement would not conclude that the alpacuna overcoat had a long staple cotton back?

A. Yes, I just mentioned about the cotton backs in these coats.

Q. It is plainly advertised in there?

A. Yes, I think that is put in there more to give it a better background: it gives it body and more firmness.

Q. And nobody reading that could come to any other conclusion except that it had a cotton back for the same reason the animal has its skin under the hair?

A. Yes.

Q. Are you familiar with the alpacuna garment?

A. I have never sold it. I have sold similar ones of materials like lamgora and lamamara.

Q. Do you happen to know that the alpacuna has a cotton backing?

A. No, but I have seen some that sold in that price range.

Q. Now, the word "alpacuna" is, as you say, a coined word?

A. Yes, and as I said in my testimony here, it impresses me as being a sort of an alpaca wool which is a similar animal to the llama and has a longer hair and reaches to the ground.

Q. And as I understand your testimony, from this advertisement you wouldn't expect to get vicuna from this advertising?

A. Well, from my standpoint—it is of the buyer—what one would expect from the advertising, we didn't go into that end of it.

Q. You wouldn't expect necessarily to get vicuna?

A. Not necessarily.

Q. You wouldn't necessarily expect to get vicuna?

A. No.

* * * * (N. T. p. 376.)

WILLIAM H. RAUBACH was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you state your name and business connections, Mr. Raubach?

A. I am a clothing salesman with the Raleigh Haberdasher, 1310 F Street, Northwest.

* * * * (N. T. p. 377.)

Q. Will you look at this advertisement marked Commission's Exhibit No. 49, and state what inference could be drawn from that as to the fiber content of the article in question.

TRIAL EXAMINER REARDON: What inference he draws from it, not what can be drawn.

MR. WILLIAMS: Yes.

A. Well, I can't draw any inference because those two words—and it is a coined trade name.

Q. What, from your observation and knowledge of the wool-bearing animals, was that name coined from?

A. From none of them. It doesn't mean a thing.

Q. You don't mean to say you don't draw any inference from that coined word, of the fiber content?

A. No, sir; I don't.

* * * * (N. T. p. 378.)

By MR. WILLIAMS:

Q. Do you recall when I was in your store several weeks ago, I was talking with you about that word?

A. I can remember you being in there, but I can't remember anything about the actual conversation because since you have been in there I have waited on about 600 people.

Q. Did I ask you about the meaning of the word "alpacuna" and the derivation and you said what the word came from?

A. No, but I do remember you trying to pin me down by saying that should contain alpacuna.

* * * * (N. T. p. 379.)

Q. Do you remember that you were talking about that word, and you finally said it was made of alpaca and vicuna, and I said "Well, why didn't you say that in the beginning instead of at the end."

A. You were arguing with me for fifteen minutes trying to get me to say that—

* * * * (N. T. p. 380.)

MRS. SALLY MUCHMORE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name and business connection?

A. Mrs. Sally Muchmore, assistant director of the Better Business Bureau of Washington, D. C., Incorporated.

Q. How long have you been in that business?

A. Fifteen years.

Q. What is the subject or object of that business?

A. I haven't been assistant director for fifteen years—I have been assistant director for ten.

The purposes of the Better Business Bureau are to promote clean competition, truth in advertising, and customer confidence in business, in a few words.

* * * * (N. T. p. 381.)

Q. Well, I am saying—when alpacuna was called to your attention, what was your impression as to the fiber content covered by it?

A. Alpaca and vicuna.

Q. Will you read this exhibit marked Commission's

Exhibit No. 49 and say what impression you gathered from it?

A. I would still be of the same impression.

* * * * (N. T. pp. 381, 382.)

Q. Well, if I may say, I think without any question, from the other side, that the overcoats also have this little medal hanging down as to the overcoat; and as to the topcoat—as to the overcoat, I mean—what would you understand from this advertisement and the Exhibit No. 77, which is the ensemble of that window there, as to the fiber content of the two coats appearing in that window, labeled alpaca, with the same tag on it?

A. Without any further identification, I would assume that it is alpaca and vicuna.

* * * * (N. T. pp. 382, 385 inc.)

Q. Now, Mrs. Muchmore, I hand you Respondent's Exhibit No. 25, and ask you to look at that and will you tell me whether or not you are familiar with it?

A. Yes, I am familiar with it.

Q. What part did you have in the language of that advertisement?

A. Part of my work is to be of service to retailers.

Q. Yes?

A. As well as to consumers—we have two jobs.

Q. Yes?

A. And in line with that, this was discussed with me.

Q. Well, what was—excuse me.

A. And this is the result of a discussion I had with the store at Kann's.

Q. When was it first presented to you for your consideration?

A. This advertisement is not—I will change it, Judge Williams, because this was a later ad. That ad is a repetition of the first one.

* * * * (N. T. pp. 386, 387.)

Q. Well, now, will you state what was in the ad they submitted to you.

A. A proof was submitted.

Q. Well, what variation was made in that proof.

A. A proof was submitted in anticipation of putting it in the Post—I think the date of November 17th is correct; I am not positive of that date—but this is the ad that did appear as a result of it. Mr. Bergundy, the president of S. Kann's, asked me to look it over and also asked me to give him my ideas as to what the Federal Trade Commission had in mind with reference to alpacuna, and alpacuna overcoats, because it was Mr. Bergundy's idea that he wanted the ad to be in accordance with what his consumers would want, and in accord with the rulings of the Federal Trade Commission.

After that conversation, we discussed the entire ad and he decided to make a certain statement, certain words in the advertisement larger, and make some changes in it.

Q. Well, will you state—

A. (Interposing) The changes are resulting in this—in this little box down here the size of the words, the graph is cut approximately in half, or maybe a third; I call this a graph (indicating).

MR. McCracken: That is right, with the picture of the hair on the back.

THE WITNESS: And that is with reference to the alpacuna, the word "cotton", the graph being made smaller, the word "cotton" was increased in size.

By MR. WILLIAMS:

Q. Was the type used in the proof previously larger or smaller?

A. It was increased in size, and the graph cut in half, a third to a half—I am not just positive. In other words, it was made this way; the graph on alpacuna was made to be the same size as this one, with reference to the ani-

mal coat; this alpacuna graph was larger and then the words "hair" and "cotton" with reference to the description of the alpacuna, pointing to the graph, were increased in size.

* * * * * (N. T. pp. 388, 392 inc.)

Q. Mrs. Muchmore, you said that before the advertisement marked Respondent's Exhibit No. 26 was published by Kann's, that a proof of the advertisement was submitted to you?

A. That is right.

* * * * * (N. T. pp. 392, 393.)

By MR. WILLIAMS:

Q. At any rate, you say the change was made and the type was enlarged, and the character ad was changed as the result of your conversation?

A. It was changed, yes.

Q. And was the type enlarged with regard to "cotton"?

A. Yes, that is correct.

* * * * * (N. T. pp. 393, 394.)

Q. What would you understand the fiber content of that coat would be from reading that advertisement, Commission's Exhibit No. 54?

* * * * * (N. T. p. 394.)

THE WITNESS: In the paragraph it says, "From the South American Andes come the warm, light silky hairs of the alpaca. From the valleys of Old Peru come the lustrous coat of the Guanaco. From the plains of Turkestan come the sturdy durable hair of the Angora. From the Texas Panhandle come the thickest, warmest and richest sheep's wool. Put them

Mrs. Sally Muchmore—Cross—
J. F. Ballenger—Direct.

all together in scientific proportions, and you have Alpacuna—”

* * * * (N. T. pp. 394, 395.)

Cross-examination.

By MR. McCracken:

Q. Now, where is the other advertisement that you were looking at a moment ago—Respondent's Exhibit No. 26?

This is the one upon which you advised. That has a description, has it not, of the exact contents of the fabric?

A. That is correct.

Q. Would you be kind enough to read the description there (indicating)?

A. The first paragraph in the body of the copy of this advertisement reads: “‘Alpacuna’ is a registered trade name and is composed of alpaca, wool and mohair pile on cotton back.” And alpaca, wool and mohair and cotton back are in good-sized type.

Q. And so there can be no doubt as to that?

A. If these facts are accurate, in my opinion this is identified as to fabric and fiber content.

Q. And there could be no deceptive effect with the term “Alpacuna” in that statement there, could there?

A. In my opinion this ad is truthful as to fiber content.

MR. McCracken: That's all. Thank you.

* * * * (N. T. p. 396.)

J. F. BALLENGER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Your name?

A. J. F. Ballenger.

Q. Will you state your business connection?

A. I am with the Better Business Bureau.

Q. And how long have you been with it?

A. Fourteen years.

* * * * * (X. T. pp. 396, 397.)

Q. Have you heard Mrs. Muchmore describe the operation of that Bureau?

A. Yes.

Q. Have you any change to make of that?

A. No.

Q. Will you read the ad marked Commission's Exhibit No. 30 and state what, if anything, you gather as to the fiber content of that coat referred to there?

* * * * * (X. T. p. 397.)

A. Reading this ad as I do, the word "alpacuna" displayed with the label, conveys to me that the garment so advertised contains alpaca and vicuna; it doesn't say what percentages, however.

By MR. WILLIAMS:

Q. Now, I hand you Commission's Exhibit No. 84, which is dated November 7, 1939, and ask you to examine that and see what you conclude as to that in the same respect.

A. Well, I would say there was only one coat made of this alpacuna, which is composed of alpaca and vicuna.

Again, I say it wouldn't convey to me as to what percentage of either fiber that is used.

Q. Yes.

Now, I hand you Commission's Exhibit No. 85, an advertisement of the Daily News of November 7, 1939, and ask you to run through that and see what impression you gather.

MR. McCracken: That is the Daily News-Record, isn't it?

THE WITNESS: The Daily News-Record, yes.

I would say that this is very similar to the previous ad, that there is only one alpacuna coat, and that would contain portions of alpaca and vicuna.

* * * * (N. T. pp. 398, 400.)

Cross-examination.

By MR. McCracken:

Q. You told us, Mr. Ballenger, that your interpretation of the word "alpacuna" was that it contained alpaca and vicuna?

A. Yes.

Q. That is because of the letters that were in the coined word?

A. That were in the coined word.

Q. And that would be the impression conveyed to your mind by that coined word?

A. Yes.

Q. Were you here when four or five witnesses, buyers for various houses, testified?

A. Yes.

Q. You heard them say it made no such impression on them?

A. Yes.

Q. They, of course, being expert in that line?

A. Yes.

Q. To the expert it conveys no impression and to the layman it does?

A. Well,—

Q. You heard them say what it does to the lay mind, in that respect?

A. Yes.

Q. I show you Respondent's Exhibit No. 26 and ask you to look at it (handing paper to witness).

Having examined that advertisement, you would say, would you not, that the overcoat there advertised for sale had a cotton backing?

A. It has the hair of alpacuna and the hair here—it doesn't say what type of hair—but it does say it has a cotton back.

Q. It says it has hair and a cotton backing?

A. Yes.

Q. And immediately to the right, at the top of the advertisement, it tells what it is composed of?

A. Yes, but not down here (indicating).

Q. Hair and wool?

A. Yes.

Q. But it is all within two inches?

A. Yes.

Q. It is all in the same ad?

A. Yes.

Q. So that having read that advertisement, you would then know, if the advertiser were telling the truth, just exactly what the contents were, and that they did not contain vicuna, wouldn't you?

A. Yes, sir.

. . . . (N. T. p. 402.)

MRS. POLLY KESSINGER MOORE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Mrs. Polly Kessinger Moore (spelling it)?

A. Yes, sir; that is right.

Q. And will you please state your business connection?

A. I am assistant professor of textiles and clothing at the University of Maryland, College Park, Maryland.

Q. The University of Maryland?

A. It is a land grant college of Maryland, of the State of Maryland.

Q. And what does that subject of yours cover?

A. Well, in the clothing line it covers the construction of various garments; and in the textile line we study the fabrics—identification of fibers and dyeing processes; and finishing processes; and we take up each fiber individually, the countries producing it and the production processes; and the chemical, physical and microscopical appearance of these fibers.

Q. And that is done in class?

A. That is done in class, lectures and laboratory.

Q. Now, are you familiar with the animal known as the vicuna?

A. Yes, I am.

Q. And alpaca?

A. Yes.

Q. And guanaco?

A. Yes.

Q. And do you know their natural habitat?

A. Yes.

Q. Whereabouts?

A. South America; the vicuna is from Peru.

Q. And what sort of animals are they—I mean, with regard to fiber, I mean, is it a wool fiber; or what kind of a fiber is it?

A. Yes, it is a type coming under the classification of wool. I can tell you more when we take it up in class.

Would you like that?

Q. Just generally.

A. We take it up under the general classification of wool fibers; taking each fiber up separately, stating the countries producing that, how the fiber is gathered—

Q. Does that apply—

How are these two animals taken up with regard to fiber. You say you take them up in all three classifications in the laboratory and lectures and classes?

A. The laboratory part of these fibers is very, very little in comparison with the other fibers. However, we take them up with respect to microscopical appearance.

Q. Yes?

A. Showing the color of the fiber, the appearance of the scales because they are more prominent in the wool than they are in the vicuna and camel's hair.

Q. Do these appear in your text books or where do you get them from?

A. The pictures of the alpaca appear in the two texts we use, Katherine Hess on textile fibers and Isabel Wingate's book on fibers.

Q. In what way does the vicuna appear there, if at all?

A. I am not certain that the vicuna appears. I am speaking more of the alpaca. The only place we have the appearance of the vicuna is from the booklets that are sent from Stroock's.

Q. You use those virtually as text books?

A. Yes, supplementary to the texts; they are on reserve.

Q. Where are they kept?

A. In my office.

Q. In your office?

A. Yes, sir.

* * * (N. T. p. 405.)

Q. Mrs. Moore, would you kindly examine the advertisement marked Commission's Exhibit No. 84, of November 7, 1939, of the Hartford Times; read that advertisement and state, please, what you would gather from that as to the fiber content of the article advertised?

A. Well, I would assume here that the alpacuna would be a combination—I cannot state the percentages, of alpaca and vicuna.

Q. And, of course, I assume from that statement if you were using that advertisement that is what you would tell your class?

A. Yes. I would rather question the price of the coat, being that I know the price of the vicuna. It is rather an extinct animal.

Q. And as far as the advertisement is concerned, that is what it would imply to you?

A. Yes.

Q. And would you take this advertisement marked Commission's Exhibit No. 85 and make the similar statement?

A. Yes, I would, with one exception—"registered in the United States patent office" there, (indicating). I question that because of questioning another one—another sample that I have of valcuna, which was purchased and thought to be vicuna, and on a microscopical examination it was wool; so here I would rather question the thing there; though, if it weren't for that, I would say it was alpaca and vicuna.

* * * * (N. T. pp. 406, 407, 408.)

Cross-examination.

By MR. McCracken:

Q. Did I understand your answer to the question a few minutes ago, in which you referred to the registered United States Patent Office in your experience with the name Valcuna?

A. Yes.

Q. When a trade name is coined and registered in the United States Patent Office it may not contain the fibers that you expect it to contain from its sound; is that what you said?

A. I did not realize that, though.

Q. But you told us that a few minutes ago?

A. Yes.

Q. When you studied vicuña?

A. Yes. The reason for that is that I have in my possession a sample of valcuna, and the girl bought it and was amazed at the price of \$35 and she thought it was a vicuña, and because we had studied it in class, we inspected this and found it was not vicuña, and labelled it as a non-informative label because it was not genuine.

Q. And you found it had been registered under a trade name?

A. Yes, sir.

Q. And you therefore assume that there may be other trade names that end in "una" which do not contain vicuña?

A. That is the only experience that I had until I read—

Q. It is a fact that sometimes the word "vicuña" is used referring to substitutes?

A. No; no. Vicuña is vicuña.

Q. I understand that. Vicuña is Vicuña, but it is sometimes used as referring to something else; isn't that a fact?

A. Perhaps the "cuna" would be but not the "una".

Q. We had at one of the other hearings the Book of Knowledge, and in that book the word "vicuña" was described as you described it—a South American animal, and this is in the record. And it was said that the word was sometimes applied to the alpaca, which is a domestic animal, the vicuña being wild. You are not familiar with that?

A. No, I am not. I have never come across that in my studies.

Q. It is a fact these hairs comes in various grades?

A. Yes.

Q. It is a fact a second coat may come up here and still be "vicuña"?

A. Yes, but not under the name of "alpacuna".

Q. Of what?

A. "Cuna."

Q. Does that mean it necessarily has to be the highest grade vicuna?

A. No.

Q. And in looking at the overcoats, those prices, I think you told us there wasn't much vicuna in that overcoat.

A. Yes.

Q. It was too expensive?

A. Yes, except the lower grades.

Q. Now, isn't it also true that the alpaca and the vicuna and the guanaco and llama belong to the camel family?

A. Yes, sir.

Q. And the camel's hair is known as hair and not wool?

A. Yes.

Q. And the llama's hair is known as llama's hair and not wool?

A. Yes.

Q. And isn't it also a fact that it is impossible to dye those hairs, that the best color is the natural color?

A. Yes, especially vienna.

* * * * (N. T. pp. 411, 412.)

Re-cross-examination.

By MR. McCracken:

Q. Do you know how much vicuna comes in here in a year?

A. Well, whatever comes in is registered with the Peruvian Government and it is not very large because the animal is very expensive.

Q. Did you ever see one in other than the natural color—did you ever see one dyed?

A. No.

* * * * (N. T. p. 412.)

E. J. WEST was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Mr. West, will you please state what your address and business connections are?

A. Well, I am a construction engineer and my address is 2215—39th Street, Northwest.

Q. Would you be kind enough to read the advertisement marked Commission's Exhibit No. 84, dated November 7, 1939, in the Hartford Times, and state what, if anything, that would convey to you as to the fiber content of the article therein advertised.

A. (Witness examines the exhibit.)

Q. In other words, state first, if you please, what you consider the derivation of the name of that overcoat.

A. Well, I think that would be a coat, the fabric of which was made from some sort of an animal.

Q. Would it convey any idea to you as to the origin of that other word—that is, would the word necessarily convey any idea to you as to its origin, the compound word there (indicating)?

A. Yes, I would think there would be alpaca in it and vicuna.

Q. And would you kindly read this one, marked Commission's Exhibit No. 85, of the Daily News-Record, of November 7, 1939, and state what you gather from that as to the fiber content of the articles advertised in the overcoat or top coat.

A. I would think the same thing.

Q. Thank you.

Now, if you were to—I am now handing you Commission's Exhibit No. 77, a picture of a window with those coats in it; and then I am handing you Exhibit No. 78, showing an enlargement of the placard as appearing in

the ensemble and an enlarged detailed picture of the cross section of the breast, and ask you as to what you gather from those pictures as to the contents of those overcoats and top coats—there is a medallion hanging down that I call attention to, too.

A. Well, it is so fine I can hardly read it—May I borrow your glasses: mine are being repaired—but this has a sort of woolly texture to it. I think a person would get the impression, a casual impression that it was some sort of a wool of a light weight.

Q. And from the words there, too, if you will read the words—

A. “Alpacuna, warmer, lighter—” to me I would get the impression it was from the two animals.

Q. What two animals?

A. The alpaca and the vicuna.

Q. Now, Mr. West, after seeing this advertisement that I have said was in Kann’s window, advertising a top coat and overcoat, under the same name and the same labelling, and the same medal, would you expect to find any difference in the fiber construction or fiber under the construction?

A. Under the same name?

Q. Yes.

A. No, the material may be different, but it would be the same material but lighter weight for the top coat and heavier for the overcoat.

Q. What first called your attention to this compound word—this coined word, “alpacuna”?

A. Well, I was at a dinner and a lady had a little card and she passed it around.

• • • • (N. T. p. 415.)

Q. Did you ever notice any advertisements along this line?

A. Not at the time I had this word or name brought to my attention: no, I had never seen it.

Q. That is, the alpacuna you hadn’t seen?

A. The alpacuna I hadn’t seen, no?

Q. Did you ever notice that ad in the newspapers?

A. Afterwards, I did; yes.

Q. Afterwards

A. Yes.

Q. When was that?

A. Well, it seems to me it was within a week or so, within a week's time.

Q. I mean, what year and month, roughly?

A. Oh, that was just a few weeks ago. That was just within a few weeks.

Mr. WILLIAMS: That is all.

Cross-examination.

By MR. McCracken:

Q. And have you seen this advertisement here, Mr. West, marked Respondent's Exhibit No. 26—that is something else describing the alpacuna overcoat. Have you noticed that?

A. No, sir.

Q. Notice it now, please.

A. Uh-huh.

Q. And you will see it describes what the overcoat is made of, with a cotton backing and with hair on the outside.

A. Yes, sir; uh-huh.

Q. And it also says what the fabric is, alpaca, wool, and mohair, and a cotton back?

A. Yes.

Q. And you will see that appeared in the Post in Washington, November 17, 1939. Reading that you see it says, "Alpacuna is a registered trade name and is composed of alpaca, wool, and mohair pile on cotton back".

A. Now, if I read it carefully, I would see there was cotton in it.

Q. Yes, and you would also see there was no vicuna in it?

182a E. J. West—Re-direct—Mrs. Rose Hardy—Direct.

A. I think I would, if I was looking to buy a coat.

Q. That is right. That is what people read advertisements for?

A. Yes.

Re-direct-examination.

By MR. WILLIAMS:

Q. When you read the ad, you didn't notice that?

A. I don't think it was in the ad I happened to pick out.

Q. But you didn't notice it?

A. No.

Q. You were looking particularly to find out what the meaning of the word was?

A. It just occurred to me, well, here this word was brought to our attention.

• • • • (N. T. p. 417.)

MRS. ROSE HARDY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

• • • • (N. T. p. 418.)

Q. Mrs. Hardy, will you state what your work is?

A. Housewife.

Q. And have you any other activities besides that?

A. I am teaching part time.

Q. What work is that?

A. Remedial tutoring.

• • • • (N. T. p. 418.)

Q. Will you read this ad marked Commission's Exhibit No. 84, from the Hartford Times, of November 7, 1939, and state what, if anything, you gather from it as to the fiber content of that coat?

A. I should expect it to be alpaca and vicuna.

Q. Have you examined also Commission's Exhibit No. 85, one from the Daily News-Record of November 7, 1939, and state what you expect to find as to fiber content in those two coats.

A. The same thing.

Q. The same thing?

A. The same thing, alpaca and vicuna.

Q. I show you an advertisement here, marked Commission's Exhibit No. 15, from the Minneapolis Evening Tribune, of November 19, 1937, and ask you to look at that and see what you would gather from it as to the fiber content of the coat advertised.

A. Alpaca and vicuna.

Q. Alpaca and vicuna?

A. Yes.

Q. And I hand you the three exhibits representing pictures taken of Kann's window here in Washington on Seventh and Pennsylvania Avenue, and ask you to examine those three exhibits and state what you gather from them as to the fiber content of those coats. One is the window, the ensemble, and the other is the detailed picture.

A. I should expect the same thing—alpaca and vicuna.

Q. And there are two coats there, one is a top coat and one an overcoat; would you expect to find the same fiber content?

A. If the label is identical, I would expect the content to be the same.

Q. The fiber content?

A. Yes.

Cross-examination.

By MR. McCracken:

Q. And the only reason you would expect to find Alpaca and vicuna is that that is what the name implies?

A. Yes.

Q. And there is nothing else?

A. No.

Q. And if you look at this other advertisement I have shown other witnesses, Respondent's Exhibit No. 26, and saw the fiber content of that coat is composed of alpaca, wool, and mohair pile, and cotton back, what would you expect to find in it?

A. Alpaca, wool and mohair; it is perfectly clear.

Q. So that would make you change your mind?

A. Yes.

Q. When did you first learn of this vicuna?

A. I don't remember exactly. My husband is an animal fiber technologist, and it is in association with his work.

Q. How did you happen to come here today?

A. I was summoned by Mr. Williams.

Q. And he went over this matter with you and asked you about these things before you came?

A. No, only when I came here this morning he asked me two or three questions.

* * * * (N. T. pp. 420, 421.)

MRS. HARRIET R. HOWE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct examination.

By MR. WILLIAMS:

Q. Mrs. Howe, will you please state your name and occupation?

A. I am Mrs. Harriet R. Howe, and I am primarily a housewife, though I do, two days a week, professional work for the American Home Economics Association.

* * * * (N. T. pp. 421, 422.)

Q. And does that bring within your work—that is, your work within its scope, the quality and fiber of various materials? In other words, fiber identification?

A. Yes, in fiber identification.

Q. And did you have some contact with a present bill pending in Congress?

A. Our association is on record under its legislative program over a period of years, to want fiber identification, and whenever any activity in that field comes to the fore, it is part of our function to investigate.

Q. Will you state whether or not the word "vicuna" is involved in that discussion in that bill?

A. I, myself, did not appear or follow the hearings. Was that the Schwartz Bill?

Q. Yes.

A. Well, I did, too, appear at one of them, but not at the last hearings on that bill.

Q. Well, does that word appear in that bill, do you know?

A. I don't know. I couldn't say of my own knowledge. I am perfectly familiar with the word myself.

Q. Oh, you are?

A. Yes.

Q. Well, being familiar with that word, would you kindly read this advertisement, being Commission's Exhibit No. 16, and state what impression you gather as to the fiber content of the article advertised?

A. Well, I would suppose that it was the wool from these animals here (indicating).

TRIAL EXAMINER REARDON: And are the animals named in there?

THE WITNESS: Well, alpacuna is named in the name; I would suppose it was alpaca and vicuna.

Over here (indicating) it says it is scientifically woven of the hair of four animals, alpaca, guanaco, angora and sheep—but I don't see vicuna.

MR. McCracken: You won't.

THE WITNESS: Well, if it isn't there, why isn't it there, if you call it vicuna.

MR. McCracken: We don't call it vicuna.

THE WITNESS: No, but you call it alpacuna.

MR. McCracken: Yes, indeed.

By MR. WILLIAMS:

Q. Suppose we pass from that and take this advertisement, which I have referred to heretofore, as Exhibit No. 84, of the Commission, and see what impression you get from that as to the contents, the fiber content.

A. Well, I certainly would think from that that it was alpaca and vicuna.

Q. And if your patrons would come to you and inquire with that ad and ask you what that was composed of, that is what you would feel justified in telling them it was composed of?

A. Yes, surely.

Q. And now I will ask you to take these three advertisements which heretofore have been referred to as taken of Kann's window, and ask you what you say as to them, as to fiber content.

A. If this is—

Q. Yes, that is on the coat in the first place; that is the ensemble; you might take that first. And, that is an enlargement of this placard here, you see (indicating), or whatever it is.

A. Uh-huh.

Q. That is the enlargement and has more details. That is Commission's Exhibit No. 78.

A. Well, of course, I would think they were the same. I don't see anything different.

Q. You see nothing to indicate that that should not be composed of alpaca and vicuna?

A. No, I would suppose it was composed of alpaca and vicuna.

Q. Now, suppose you were to see the two coats and one is an overcoat and one is a top coat, under the same label right through, would you expect to find the same cloth, or a different cloth making up the two coats?

A. Well, there might be different weights or tailoring in the coats.

Q. But as to the fiber content?

A. I would suppose the fiber content to be identical.

Q. And if your patrons came to you and made inquiry, you would so tell them?

A. Well, I would tell them that that was my opinion.

Q. Yes, that is your opinion.

A. Yes, but as a matter of fact, they don't come to us—I mean, we don't attempt to answer technical questions.

* * * * (N. T. pp. 426, 427.)

Cross-examination.

By MR. McCracken:

Q. Just one question.

Looking at the advertisement, Respondent's Exhibit No. 26, which appeared in November 17, 1939, in the Washington Post, you see a description of what the content of alpacuna is, don't you?

A. Yes, sir.

Q. Alpaca, wool, and mohair pile on cotton back?

A. Yes.

Q. No vicuna named?

A. No.

Q. Hereafter, therefore, if anyone asks you what is in the alpacuna overcoat, you will tell them that it is that, won't you?

A. Yes, and I will make another remark about it; I will say I think it should be called "alpacotton".

* * * * (N. T. pp. 427, 428.)

Q. But you will tell anyone that asks you about alpacuna, as to what it is composed of, that it contains alpaca, wool, mohair and cotton back, and no vicuna?

A. Yes, and I will tell them it is a most unfortunate occurrence.

* * * * (N. T. pp. 428, 429, 430.)

Dr. W. M. MANN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Your name, sir?

A. Dr. W. M. Mann.

Q. And your address?

A. The Zoo, the National Zoo, Washington, D. C.

Q. One question, I think, only; will you state your name fully for the record there, Dr. Mann; and you are connected with the Zoological Department here in Washington?

A. Yes, sir, the Zoo; the National Zoo.

Q. In what position?

A. Director.

Q. Do you recall being at the World's Fair in New York this year?

A. Yes, sir.

Q. Well, I suppose being interested in animals, you went to Buck's Menagerie?

A. Jungle-land, the second-best show in the place.

Q. Amongst those animals that you saw there, was there an animal known as vicuna?

A. Yes, sir; he had a pair of them.

Q. Was that publicly exposed like all other animals in that kind of place?

A. Yes, sir.

Q. And there was nothing to prevent anybody going to that Jungle-land, and from seeing those animals, and from seeing the names; the fact is that is what they are there for?

A. I saw them there, and I asked him if he wanted to sell them, to give me his price on them.

MR. WILLIAMS: Your witness.

THE WITNESS: We have all the other types except the vicuna.

By MR. WILLIAMS:

Q. You have all the other types?

A. The guanaco, llama; we had a pair of vicuna but one died in 1918 and one died in 1920—lived about two years and four months.

Cross-examination.

By MR. McCracken:

Q. It is a rare animal?

A. It is the rarest in captivity. The guanaco and vicuna are wild and are not domesticated like the others.

Q. And very few of them brought to this country?

A. Less than any of the others.

Mrs. ERNEST WILLIAM HOWARD was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Your name and address?

A. Mrs. Ernest William Howard, 1521 Monroe Street, Northwest, Washington, D. C.

Q. Mrs. Howard, what is your occupation?

A. Housewife.

Q. Yes.

A. And I am Department Chairman of Legislation of the District Federation of Women's Clubs.

• • • • (N. T. pp. 436, 437.)

By MR. WILLIAMS:

Q. You are speaking about advertisements. You are speaking of advertisements in respect to alpacuna coats?

A. Yes.

TRIAL EXAMINER REARDON: You have seen the advertisements before you made that statement?

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: That is all right.

THE WITNESS: The first one is, I had understood that Kann's Department Store was the only one that sold the alpacuna coat so I went in there to ask about the alpacuna coat. And I asked the salesman what it was made of and he said—

• • • • (N. T. pp. 437, 438.)

THE WITNESS: (Interposing) This is where I understood the alpacuna coat was sold, only at Kann's, and of course, I might say to the gentlemen in the store that that is the only way a customer

would have—from the hearings last year we found that manufacturers and all those who were against the Schwartz-Martin Bill were putting over the fact that women and consumers, buyers, were only interested—the theme of the whole thing was what they don't know won't hurt them. That was definitely the theme; and I asked the salesman what alpacuna was—

* * * * (N. T. p. 438.)

TRIAL EXAMINER REARDON: Was the alpacuna coat for sale in this store?

THE WITNESS: It was for sale in this store, and I have some very definite evidence—

TRIAL EXAMINER REARDON: In the store?

THE WITNESS: Yes. And I went in to buy a coat—

TRIAL EXAMINER REARDON: You may say what the salesman told you.

THE WITNESS: I asked him what alpacuna was, and as I say, offhand, you would think alpacuna—

TRIAL EXAMINER REARDON: What did he say it was?

THE WITNESS: I might say that what so many women told me—

MR. McCracken: I object to that very definitely and very violently.

TRIAL EXAMINER REARDON: Just answer the question.

THE WITNESS: He said the alpacuna was from the alpaca of the Andes Mountains, and he said "una" meaning one, and he said it sold for \$40.

* * * * (N. T. p. 439.)

192a Mrs. Ernest William Howard—Direct.

By MR. WILLIAMS:

Q. What further conversation took place in that regard?

A. He showed me how it did not rub off; he took the sleeve—

TRIAL EXAMINER REARDON: Was there any further conversation about the material composing it?

THE WITNESS: No. And we walked over there and I saw the Siegel book there and I took a glance at it.

By MR. WILLIAMS:

Q. Was there any further conversation about it?

A. Yes. He kept on going over it and he never mentioned the animal, though.

• • • • (N. T. p. 440.)

Q. Did he not, as I gather—he didn't say anything about cotton being a part of the coat?

A. No, he didn't. I only saw that on the book. The other three items, the picture of the alpaca, llama, and then I went downstairs, and spoke to another man about the alpacuna.

• • • • (N. T. pp. 440, 442.)

Q. Was there anything mentioned about vicuna in this Fashion Shop?

A. In the Fashion Shop, no.

Q. Well, wait a minute—did he mention vicuna?

A. No.

• • • • (N. T. p. 442.)

TRIAL EXAMINER REARDON: Was the term "vicuna" mentioned by you or the salesman in Kann's Store?

THE WITNESS: Yes, it was; we talked about it.

TRIAL EXAMINER REARDON: What did you say?

THE WITNESS: I asked him what alpacuna was made of and he told me the meaning of it.

TRIAL EXAMINER REARDON: What did he say?

THE WITNESS: He said the "una" was from the Latin word "one", meaning one, and he told me it was \$40 and it was the finest coat made.

TRIAL EXAMINER REARDON: We are not interested in the price. What did he say the coat was made of?

THE WITNESS: So much cotton in it; he didn't mention the wool. He tried to tell me a little bit about the structure.

TRIAL EXAMINER REARDON: Wait a minute. He told you that "una" meant one?

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: Did he tell you anything about the other part of the name?

THE WITNESS: No.

* * * * (N. T. pp. 443, 451 inc.)

Cross-examination.

By MR. McCracken:

Q. You referred, Mrs. Howard, to having read an advertisement of Kann's Store before you went in there?

A. Yes.

Q. I show you Respondent's Exhibit No. 26. Is that the advertisement that you read?

A. No, I didn't read that one.

Q. Will you read it now (handing the exhibit to the witness).

A. (Witness reads the exhibit.)

Q. There is no doubt in any one's mind, after reading that, as to what the contents of the overcoat is?

A. Yes, but as I say, he also told me about the alpaca—una part of it. Those things were all said but I didn't know what the name meant.

* * * * (N. T. p. 451.)

Q. In reading the advertisement, it sufficiently appears, and clearly, that this garment is made of alpaca, wool, and mohair pile, on a cotton back?

A. Yes, I see that.

Q. So that advertisement gives a graphic description of the hair on top of the cotton back?

A. That does, but usually when they go to sell it to you—

Q. We are talking about the advertisement. That is correct?

A. Yes.

Q. Now, one more question.

Before you began to investigate this matter at all, and you saw the word "alpacuna", as applied to an overcoat, what did that word mean to you?

A. Nothing other than alpaca. I thought it was alpaca: that's all.

* * * * (N. T. pp. 452-3.)

MISS HELEN E. CREIGHTON was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Your name and address?

A. Helen E. Creighton, Arlington Hall, Ben Franklin Station, Virginia.

* * * * (N. T. pp. 452-3, 454.)

Q. Miss Creighton, will you please state your occupation and any business connection you have?

A. Well, I am the Junior college professor and assistant on the Law Library staff at the George Washington University.

Q. What is your first connection?

A. Arlington Hall Junior professor in the University there, in economics and mathematics.

Q. Are you acquainted with the word "vicuna"?

A. Yes.

Q. When did you first become acquainted with that word?

A. About eighteen years ago, when I studied geography in the grade schools in Pennsylvania.

Q. Do you come in contact with that word in your present work?

A. Yes, I do; in teaching economics, about the export and import trade of Chile and Bolivia and Peru and the Argentine.

Q. Can you give the meaning of that word?

A. Well, usually it comes up in Atwood's Geography and the Women's Book on Textiles, and, of course, I refer them to the Encyclopedia Britannica and the World Book; and I referred them to that magazine, Fortuna—the January issue. There is a book, The Jungle, an interesting little book that tells about it.

Q. Is it an adult book?

A. Yes, it is an adult book but it is just a little bit more interesting; it has pictures and the pictures of the products as well.

* * * * (N. T. p. 455.)

MR. McCracken: What do they say, that they mention the word "vicuna"?

THE WITNESS: Yes, they mention the word "vicuna" and the product. There are not many in our library that deal with it, and of course I don't keep all those things in mind, and on an assignment I don't keep page records.

MR. McCracken: They refer to a jaguar, too?

THE WITNESS: I guess so.

* * * * (N. T. p. 456.)

By MR. WILLIAMS:

Q. I hand you Commission's Exhibit No. 85, the Daily News-Record, heretofore used, and ask you what that trade name would indicate to you as to fiber content.

A. I reckon it would be a combination of alpaca and vicuna wool.

Q. Well, if you would see this advertisement in Kann's window, I mean, handing you now the three advertisements of Kann's, and you saw that advertisement—the ensemble—and then you saw this Exhibit No. 79, which has a medallion on it, of an animal—what would you think that word "alpacuna" meant as to fabric content?

A. Well, in that one I would definitely say it was that I thought it meant alpacuna and alpaca—a mixture of those, because that animal there is very much like an alpaca or a vicuna. And I would associate that with the thing that is marked here "The alpacuna".

Q. You mean—

A. (Interposing) Well, it says, "alpacuna topcoat \$35" and it says alpacuna and it has that attached there, and it is quite like an alpacuna animal.

Q. And you would say that meant that from this advertising?

A. Yes.

* * * * (N. T. p. 457.)

Cross-examination.

By MR. McCracken:

Q. Unless you read the other advertisement that I now show you from Kann's, Respondent's Exhibit No. 26, which describes, does it not, the contents of the overcoat (handing exhibit to witness)—having read that advertisement, what would you teach your class, Miss Creighton?

A. Well, that the advertisement wasn't very clear.

Q. Well, now, let's be fair about that.

* * * (N. T. p. 457.)

Q. I am referring to this advertisement (indicating).

A. Yes, sir.

Q. Can there be anything more clear than the words "Alpacuna is a registered trade name and is composed of alpaca, wool and mohair pile on cotton back"? What is unclear about that?

A. Well, I would probably still have the same opinion I had before, because it is alpaca and that is one of the things I said it was, and also mohair—vicuna hair also goes under the name of mohair.

Q. Oh, does it?

A. It isn't supposed to be; if you look it up in Webster's big, thick dictionary you will find it is often called that.

Q. Wait a minute. Is mohair called vicuna, or is vicuna called mohair?

A. Well, vicuna is called mohair.

Q. It is perfectly legitimate in your judgment to call a garment which is made of alpaca and mohair, it is perfectly legitimate to call that vicuna mohair?

A. I don't know that it would be.

Q. Well, you have just told us that you wouldn't change your mind because the word "vicuna" means mohair.

A. It don't necessarily, but it may; it may or it may not be.

Q. And if, to you, then to the public; is that right?

* * * * (N. T. pp. 458, 459.)

By MR. McCracken:

Q. And if to you, then to the public, as the dictionaries inform the public?

A. I don't know about that.

Q. Well, you have known about everything else. Let's get this clear.

A. Yes,—but I have had a little more background on that than the general public.

Q. Then the general public knows nothing about vicuna?

A. No, the general public does.

Q. Then the general public knows about mohair?

A. Oh, I don't know.

Q. What is the composition of mohair?

A. I don't know myself.

Q. Then how would the general public know about mohair?

A. Because there is a lot of people know more about it than I do.

Q. So in spite of the clear wording of this that because "una" is at the end of that name "alpacuna"—

A. C-u-n-a.

Q. Alpaca—a-l-p-a-c-a is the way to spell alpaca?

A. Yes.

Q. And because "una" is on the end of that, vicuna is in that, and you say because mohair is one of the things that is named there; is that right?

TRIAL EXAMINER REARDON: Well, she has answered that question already.

THE WITNESS: I think I have. Yes.

* * * * (N. T. pp. 460-462 inc.)

Leonard Gilman—Direct.

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LEONARD GILMAN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name, your address, and business connection.

A. Leonard Gilman, the Toggery Shop, 3165 Wilson Boulevard, Arlington, Va.

Q. In what sort of business are you engaged?

A. Manager of men's wear and clothing shop.

Q. How long have you been engaged in that business?

A. Fifteen years.

Q. Fifteen years?

A. Not at that address, but I have been in that business for 15 years.

Q. I see.

Mr. Gilman, I show you three photographs, marked Commission's Exhibits Nos. 77, 78, and 79, and I will ask you to look at them (handing photographs to the witness).

A. Yes, sir.

Q. Now, look at those closely, and I will ask you, if you were to see those coats through a glass window, which is indicated in the pictures, with the placard and the other matter around them, what would you gather from that whole ensemble there as to the fibre content of the articles advertised?

A. That it is definitely an alpaca coat, meaning it should contain the alpaca cloth and the vicuna cloth. That would be my opinion.

TRIAL EXAMINER REARDON: That is the answer.

A. (Continuing) The meaning of the implication.

MR. WILLIAMS: Yes.

By MR. WILLIAMS:

Q. May I ask you, also, to look at Commission's Exhibit 84, and state what, if any, inference you draw from it as to the fibre content of the article advertised?

A. That, again, implies alpaca and vicuna in the fabric.

* * * * (N. T. p. 464.)

Q. The next exhibit that I hand you is Commission's Exhibit No. 85, Daily News Record, and I will ask you to examine it and tell us what inference you draw, if any, as to the fibre content of this?

A. Well, I would get the same inference there, with one exception. It says here that there is only one alpacuna overcoat or top coat, whichever the case might be. Of course, I am not expert enough to say there is only one. I believe there are others who wear those alpacuna coats.

TRIAL EXAMINER REARDON: Well, they do not call those alpacuna.

THE WITNESS: No, they don't call them alpacuna. It is only alpacuna, from the name, that I know of.

* * * * (N. T. pp. 464, 465.)

By MR. WILLIAMS:

Q. Will you examine that Exhibit No. 30, an advertisement of Kann's in Washington.

* * * * (N. T. p. 465.)

THE WITNESS: The "Evening Star".

Q. Read that and see what inference you draw, if any, as to the fibre content of the articles advertised.

A. Well, I find no inference in this particular ad here as to all the fabrics—as to what the fabric in the coat is, other than my own impression of the alpacuna, meaning

the coat is made from the wool of the alpaca and vicuna animals.

* * * * (N. T. pp. 465, 466.)

Q. Do you know, as a matter of fact, what the alpaca cloth is composed of?

A. Well, I sold the alpacuna coat for about five or six years in one of those stores in New York City; I mean, that is, in association with the coat.

Q. Yes.

A. That is all I know anything about the coat, and I would say definitely that the coat does have alpacuna and vicuna cloth in it. I mean, to my own particular knowledge—I mean definitely it contains those particular fabrics.

Q. You gather that from your previous contacts with the coat?

A. Yes.

Q. Or your contact with the people in connection with the coat?

A. Yes, that is right.

Q. And that is what you understood the coat was composed of?

A. Yes, sir.

Q. If you should see this alpacuna coat advertised as the only one alpacuna coat, would you expect to find other coats sold in Washington, for instance, of the same materials and the same coat for all practical purposes except the name.

A. Well, if it was the same alpacuna coat, I would take it for granted that there is just one alpacuna coat, regardless of where you find it.

Q. Suppose you did find such a coat, would you expect that to be an alpacuna?

A. No, sir; I would not.

Q. Or ropa-cuna?

TRIAL EXAMINER REARDON: There are at least two

or more varieties of aspirin, under the trade name of "aspirin," but there is only one Bayer's aspirin.

* * * * (N. T. pp. 467, 468.)

Cross-examination.

By Mr. McCracken:

Q. You sold the alpacuna overcoat for some time, Mr. Gilman?

A. At New York, about 1934 or 1935.

Q. Do you know that the overcoat has a cotton back?

A. Yes, I know it is a knitted fabric.

Q. And the top coat is made of wool?

A. That is right.

Q. So that in that respect, and in that respect only, they differ?

A. I believe you are right, there.

Q. It is a well known trade name, now, is it not?

A. Yes, I believe it is.

Q. And it is a very good overcoat, is it not?

A. I think so.

Q. The fact that it has the letters "una" or "cuna" at the end, is what leads you to believe that it is supposed to contain vicuna?

A. I believe that is correct, yes.

Q. You do not know whether it does contain vicuna or not?

A. I couldn't definitely say whether it does or not, but I believe it does.

* * * * (N. T. p. 469.)

Q. I show you Exhibit No. 25, which is a Kann's advertisement, and which describes the alpacuna overcoat as having a hair exterior and a cotton back, does it not?

A. Yes, sir.

Q. And it gives the composition of the overcoat as alpaca, wool, and mohair pile on cotton back?

A. That is correct.

Q. That discloses exactly what it is made of, does it not?

A. Yes, sir.

Q. So it does have alpaca but not vicuna in it?

A. I should say so, from the description.

Q. You are familiar with a great many trade names in the clothing trade, are you not?

A. One or two.

Q. I want to show you a list of trade names which apply to overcoats, under which is shown "c-u-n-a" or "u-n-a". I will ask you to run your eye down that list and tell us if you know those names.

A. I know the vicunas and the macunas, I have seen a good many times, and the rockuna.

Q. Velacuna?

A. Velacuna, supercuna--

Q. What do these names mean? What does "supercuna", for instance, mean to you?

A. Well, I would say the supercuna coat, a coat carrying that label, would mean that the coat is made of almost full content of vicuna cloth.

* * * * (N. T. pp. 470, 471, 472.)

Q. Do you happen to know that the alpacuna coat has a cotton backing?

A. I couldn't say definitely, but I would take it for granted it would have.

Q. Why do you say you take that for granted?

A. Because I would say, offhand, about sixty or seventy percent of the coats that represent the cuna name do have cotton backings.

Q. They do acquire that significance?

A. Yes; all knitted back.

Q. Knitted back.

A. That is right.

Q. Whenever the name of an overcoat begins or ends in "cuna" or "kuna." k-u-n-a—

A. It must have a knitted back.

Q. —it must have a knitted back?

A. No matter how cheap a coat it is.

Q. And that is its significance to you?

A. Yes.

Q. And when you say "knitted," you mean a knitted cotton back?

A. A knitted cotton back.

Q. And that is really a sort of a developed meaning that came in in the last 10 years or so; is it not?

A. I think that is right; yes.

Q. As a matter of fact, the change in the art of manufacturing an overcoat from all-wool knitting to a cotton back knitting began about nine or ten years ago, did it not?

A. I would say about 1928.

Q. And this alpaca overcoat was among the first?

A. I believe it was the first.

Q. What percentage, would you say, of the overcoats that are sold today have a knitted cotton back?

A. Sixty or seventy percent. Of course, that is one of the pile fabrics.

Q. Yes.

A. That would not include worsteds.

Q. Paris peets, or anything like that?

A. That is right.

TRIAL EXAMINER REARDON: You mean by that—

THE WITNESS: Any coat with a nap to it, excepting, of course, worumbus, or something like that.

TRIAL EXAMINER REARDON: All alpaca coats have a nap to them?

THE WITNESS: Yes, sir.

TRIAL EXAMINER REARDON: All of them have a cotton nap?

THE WITNESS: I would say sixty or seventy percent of them.

TRIAL EXAMINER REARDON: I see.

By MR. WILLIAMS:

Q. Do you happen to know the amount of vicuna cloth that is imported into the United States?

A. I really do not.

Q. Sir?

A. I never have gone into it.

Q. You know it is very small?

A. I know it is very small.

Q. And very expensive.

A. The one with the vicuna pelt, instead of the cloth in the skin, is not expensive. I would say, however, that the vicuna pile made from the vicuna pelt would be expensive.

Q. Do you happen to know that it sells for about eighty or ninety dollars a yard?

A. I couldn't say as to that. I do know that a vicuna coat should sell for at least \$200.

Q. And you know they sell as high as \$900?

A. I have seen that on display at \$750.

Q. Would you say that you could not very well make a vicuna coat at \$40, at the outside?

A. No, I wouldn't say you could.

Q. In other words, there are only a few hundred yards of vicuna cloth made up in a year, are there not, to your knowledge?

A. I wouldn't know how many yards they made up. I don't have any particular knowledge of that, about the imports of vicuna fabrics and pelts, but I know it is an expensive fabric to pile. That I do know.

Q. Very rare?

A. Very rare—almost as rare as white camel's hair.

Re-direct-examination.

By MR. WILLIAMS:

Q. In view of the fact that you would expect some vicuna to be in a coat that is so advertised?

A. Yes, I would get that impression of any coat that bears a name "vicuna".

* * * * (N. T. p. 475.)

WALTER NORDLINGER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you state your name, your address, and your business connection?

A. Walter Nordlinger, the Mode, Eleventh and F Streets, in Washington.

Q. You say the Mode is here in Washington?

A. Yes, sir.

Q. What sort of a store is that, Mr. Nordlinger?

A. Men's clothing and furnishing store.

Q. How long have you been in that business?

A. Nineteen years.

* * * * (N. T. p. 476.)

Q. Kindly take these photographs, three in number, being Commission's Exhibits Nos. 77, 78, and 79, and state what, if any, inference you gather from them as to fibre content of the coats advertised, the top coats and overcoats?

A. I agree with the first witness, that assuming that

the consumer, in his own mind, registers or attempts to register what a vicuna was.

TRIAL EXAMINER REARDON: What about you—not the consumer.

THE WITNESS: I would get the implication that the coat had a vicuna content.

TRIAL EXAMINER REARDON: Yes.

THE WITNESS: To a man in the clothing business. However, it possibly might have another connotation to a layman.

* * * * (N. T. p. 477.)

Q. And what other fibres would be in it, if any?

A. It very definitely shows alpaca-vicuna. That would be the implication.

Q. I now hand you Commission's Exhibit No. 84, and I will ask you the same question.

A. I would like to answer the question. Am I to state in answering that my own reaction?

MR. McCracken: Yes.

MR. WILLIAMS: Yes.

* * * * (N. T. p. 477.)

Q. Then I can ask you later what, in your opinion, was the customer's reaction. That will be a later question to ask you.

A. The same opinion on this, sir.

Q. I hand you Commission's Exhibit No. 85, and ask you the same question.

A. The same, sir.

Q. And Commission's Exhibit No. 30.

A. Still the same.

Q. The same opinion?

A. Yes, sir.

* * * * (N. T. p. 478.)

Q. Do you know of other stores using the word "cuna", or other factories using the word "cuna," in the name?

A. I am sure that there are but just at present I cannot think of any manufacturers that use that name.

Q. The manufacturers that you have done business with in the past have used that name? Have used it?

A. They use the name "cuna". They have insisted on it in the last four or five years.

* * * * (N. T. p. 479.)

Cross-examination.

By MR. McCracken:

Q. Do you agree with the last witness in saying that "cuna" at the beginning or end of a name has the significance of a cotton knitted back?

A. That the word "cuna" at the beginning or end of a word implies that there is cotton in it—no, sir.

Q. You do know that an alpacuna overcoat has a knitted cotton backing?

A. Yes.

Q. Are you familiar I think you said you were familiar—with some of these other names. Are you familiar with the velacuna coat?

A. The velacuna coat or the alperu? The velacuna, I don't just recall offhand.

Q. How about the macuna?

A. I know a manufacturer of them, and I am familiar with the coat generally.

Q. You know that that coat has a cotton backing, do you not?

A. No, I do not.

Q. How about the supercuna?

A. I am not sure about that.

Q. You are not sure about that?

A. No.

Q. The ropacuna?

A. No.

Q. You do not know that?

A. No.

Q. The Kunapac; do you know that?

A. No, sir; I am sorry.

Q. Would you say that each one of those coats was made of vicuna?

A. I get the same reaction I do on the alpacuna.

Q. Do you know of the alpacuna overcoat as a garment, do you not?

A. I do.

Q. Do you know its content, as a matter of fact?

A. My most recent opinion was that Kann's used the word; they said that it was alpaca, mohair, and wool, with cotton backing; but I knew that previously.

Q. In other words, you knew that that was the fabric of the overcoat?

A. The overcoat or the top coat has a wool backing.

Q. So that your observation is that no longer it is made of alpacuna, because you know otherwise?

A. I knew definitely it was not.

Q. Then, the reaction that you testified to about here was a reaction which was settled in your mind from your actual knowledge, was it not, when you looked at the name "alpacuna"?

A. Yes, sir; absolutely correct.

Q. And you had actual knowledge as to what was in the coat?

A. That is right.

Q. It is a well known name?

A. Very well known.

Q. And in the clothing trade it is known as you know it?

A. I accept it as a fine product.

Q. Accepted as a fine product?

A. That is right.

Q. Without regard as to whether it has vicuna in it or not?

A. That is right.

Q. Do you happen to know how much vicuna comes into the United States in a year?

A. I know it is very limited, but I don't know the exact figures.

Q. It is extremely expensive?

A. Very expensive, especially in heavy hair.

Q. You would not expect to find it in a \$40 overcoat?

A. Definitely not.

* * * * (N. T. pp. 482, 485 inc.)

Re-cross-examination.

By MR. McCracken:

Q. Do you know also, as the last witness did, that the majority of pile fabric coats now have a knitted cotton backing?

A. I wouldn't say, of my own knowledge, that the majority have.

Q. But a great many have?

A. A great many have.

Q. A large percentage?

A. When you get up into the higher class, \$50 and up, those coats will possess an all-wool back.

Q. But the overcoat, the fabric coat with a cotton backing, in the last 10 years has become a very popular and well known garment in the United States?

A. Yes, practically universal in the medium-priced field.

MR. McCracken: That is all.

Re-direct-examination.

By MR. WILLIAMS:

Q. Did I understand you to say a while ago that the public in Washington—

* * * * (N. T. p. 486.)

THE WITNESS: I can almost definitely say that 99 percent of the public does not know anything about the actual content of the coat.

MR. McCracken: He does not know?

THE WITNESS: He does not know and he does not attempt to analyze it in his own mind. I would say 99 percent may be a little high; possibly 90 percent.

* * * * (N. T. pp. 487, 488.)

ROBERT L. COHEN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name, sir, and your address and business connection?

A. Robert L. Cohen, dentist, 3115 Wilson Boulevard, Arlington, W. Va.

Q. I show you three photographs, marked Commission's Exhibits Nos. 77, 78, and 79, and I will ask you to examine them and tell us what impression you gather from them as to the fibre content, if any, of those articles advertised therein. This (indicating), I may say, is a general picture, and these (indicating) are detail pictures. That is, Exhibits 78 and 79 are detail pictures.

A. Well, I would assume that the coats were made of a fabric which consisted of alpaca and vicuna fibre.

Q. Will you take this exhibit, Commission's Exhibit 84, and examine it and give us your answer as to that?

A. Yes; the same.

Q. Will you please look at Commission's Exhibit No. 85 and make the same examination.

A. Yes.

Q. The same impression, you say?

A. The same impression.

Q. Will you please look at Commission's Exhibit No. 30, and make the same examination, and answer the same question?

A. The same.

Q. The same?

A. Yes.

* * * * * (N. T. pp. 489, 490.)

Cross-examination.

By MR. McCracken:

Q. This is a coined word, is it not,—“alpacuna”?

A. I can't say. I don't know enough about fabrics to tell you.

Q. When did you first hear the word “alpacuna”?

A. I might have heard it before and paid no attention to it, but the first time I saw it was when I was shown one of these ads by, I think, probably an agent of the—

Q. Commission?

A. Of the Commission.

Q. Recently?

A. Sir?

Q. Within the last few days?

A. Oh, no, it has been—I don't remember just when it was. I didn't pay much attention to it at the time.

Q. Well, this fall.

A. Several months ago, probably.

Q. You mean an agent of the Commission came to you and showed you one of those advertisements?

A. That is probably who it was, now that it has come up. I frankly didn't pay much attention to find out who it was at the time.

Q. That is the first time you ever heard about vicuna as applied to an overcoat?

A. I may have heard the name before but paid no attention to it.

Q. What were you asked when this was shown to you there?

A. Questions very similar to those that have been asked me just now here.

Q. Was it suggested to you that the name "alpacuna" implies a content of alpaca and vicuna?

A. No, I can't say it was.

Q. You were just asked the question.

A. I was asked the question, to look over it, and—

Q. Were you familiar with those two names at the time you were asked the question?

A. I knew that there were such names as alpaca and vicuna.

Q. Did you know what vicuna was?

A. To this date I don't know, and I don't know what alpaca is, but I should say the names, in connection with overcoats, are very similar to having a black camel's hair.

Q. It is just a name to you?

A. To me, just a name.

Q. But the word "alpacuna" is not a word that you ever heard of before; so it must be a coined word or a compound word; is not that so?

A. Well, I wouldn't say it is a coined word. I know that there is such an animal as alpaca and there is such an animal as vicuna, and just from these advertisements their fibre should be used in making these coats.

Q. You say "it should be used". You mean that it may be used.

A. I mean, judging from the ads, they are used.

Q. I show you another advertisement, Exhibit No. 25, and I will ask you to run your eye over that advertisement. It is an advertisement of the alpacuna overcoat. Tell us what conclusion you arrive at in reading that advertisement, as to the contents of the coat. Does that actually state what the contents are?

A. This states that—well, the pile. I guess that is what it is. That is the hair.

Q. Yes.

A. And I would judge from that that it is alpaca and vicuna hair, with a cotton backing.

Q. Until you read the next sentence. Read that sentence.

A. "Alpaca is a registered trade name, and is composed of alpaca, wool, and mohair pile on cotton backing".

Q. That is a perfectly clear description of what is in the coat?

A. That is right.

Q. And it does not contain vicuna?

A. That is right.

Q. So that no one reading that advertisement would have any doubt as to what was in that overcoat.

A. That is true.

Q. Do you know anything about the amount of vicuna that comes into the United States in a year?

A. No, I don't know a thing about that.

Q. Did you ever see an alpacuna overcoat?

A. Not to my knowledge; that is, not knowing that it was alpacuna.

* * * * (N. T. p. 494.)

BYRON F. DIXON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name, sir, and your address and business connection?

A. Byron F. Dixon. Eleven hundred Sixteenth Street is my business address.

Q. And what is your business?

A. Professor of accounting.

Q. Professor of accounting?

A. Yes, sir.

Q. You are a resident of Washington or vicinity?

A. Vicinity.

Q. I hand you three photographs, Commission's Exhibits 77, 78, and 79; this Exhibit, No. 77, being an ensemble picture, I suppose you would call it, and the others being detail pictures of the store window here in Washington. I will ask you to examine those and state what conclusion you would come to from the advertisement and the whole thing as to the fibre content of those coats, if any at all.

A. I would consider these to be the wool of the alpaca and vicuña.

Q. That is just a coat, the detail and picture.

A. I would assume that to be also, on that, too—

Q. I hand you Commission's Exhibit No. 84, the Hartford Times, and ask you to examine it and answer the same question.

A. I would consider that; yes, sir.

Q. And the same question propounded as to Exhibit No. 65, the Daily News Record.

A. Yes.

Q. And the same question propounded as to Commis-

sion's Exhibit No. 30, Kann's advertisement in the Evening Star, January 12, 1937?

A. I would consider that, too; yes, sir.

Q. You have noticed, I suppose, on Commission's Exhibit No. 85, the Daily News Record, a little medallion in the picture, and probably elsewhere, where the alpacuna coat is referred to in this way:

"There is only one alpacuna."

Would you expect, in view of that statement, to find other coats of the same cloth exactly on the streets of Washington under different names?

A. No, I would not assume so.

* * * * (N. T. pp. 495; 496.)

Q. Do you remember where you first came in contact with the word "vicuna"?

A. Yes, I came in contact with that while I was teaching school at one time, and ran across it in geography, and I connected the alpaca, vicuna, and llama very closely due to that.

* * * * (N. T. p. 496.)

Cross-examination.

By MR. McCracken:

Q. When did you first hear of the alpacuna overcoat, Mr. Dixon?

A. Well, I never heard of an alpacuna overcoat until just lately.

Q. How did you hear of it lately?

A. Indirectly, through a question asked me by a gentleman; he asked me if I knew what a vicuna was, and I told him yes, and at the time "Well," he said, "I didn't know that", and I told him the same as I told you.

Q. He then asked you what the word "alpacuna" meant to your mind

A. Yes, "alpacuna", and then immediately alpaca and vicuna came to my mind, and I associated them very closely.

Q. Did you read the advertisement which I show you, known as Exhibit No. 25? I will ask you to read it and tell us what conclusion you would come to as to the contents of that overcoat?

A. Definitely states "alpaca", wool, mohair pile on cotton back"—nothing concerning vicuna.

Q. Did you ever hear of vicuna being used as synonymous with "mohair", as one of the witnesses in the trade testified here the other day?

A. I am sorry, I know nothing concerning that; I never heard of it.

Q. Do you know anything about the amount of vicuna cloth that comes into the United States in a year?

A. I do not.

Q. Or anything about its price?

A. I do not.

Q. Or anything about its construction or price range?

A. That is out of my line.

Q. All that you know is that there is a vicuna and alpaca.

A. I know it.

Q. And the word "alpacuna" might be a combination of the two?

A. And I know that they are wool bearing animals. I am a farm boy.

Q. And the word "alpacuna" might be a combination of the two?

A. Definitely so, because the two are associated in my mind because I came across the two words at the same time—very closely associated.

* * * * (N. T. pp. 498, 499.)

By Mr. McCracken:

Q. When I say there is only one alpacuna overcoat,

does not that mean that the manufacturer of that overcoat has appropriated that name to that garment, and that nobody else can appropriate that name to his garment?

A. I would say so, yes.

Q. That is what it means?

A. Yes.

Q. But another man may make an overcoat, called "macuna" or "supercuna" or "ropacuna", and state that it contains the same content as the alpacuna, but there is only one ropacuna, is there not, because that is another manufacturer's name? That is what it means, does it not?

A. I would take it to mean it; yes.

Q. To your mind?

A. Yes.

Q. That is right.

One more question: Some of the witnesses that you have not heard in this case have testified that this name was constructed or coined by the use of the word "alpaca" and the Latin word "una", u-n-a, meaning one, the implication being that there is only one. Would that implication arise in your mind when you heard that story?

A. Not at all.

Q. It is quite possible, is it not?

A. It is possible, yes.

Q. You would connect it particularly with the slogan, "There is only one"?

A. It is possible.

* * * * * (N. T. p. 500.)

PRENTISS WILLSON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name, your address, and business or profession?

A. Prentiss Willson. I am a physician in the Far-ragut Medical Building.

Q. In Washington, of course?

A. Yes.

Q. I hand you three advertisements, Doctor, Commission's Exhibits 77, 78, and 79, and ask you to examine them and state what, if any, conclusion you would come to as to the indication that there would be as to the fibre content of those garments so advertised. Two of them are detailed pictures and the other is the ensemble of it.

A. My impression would be that they are an advertisement of an overcoat made of alpaca and vicuna.

Q. And may I ask you the same question as to Commission's Exhibit No. 84, which heretofore has been used?

A. The same thing.

Q. And Commission's Exhibit No. 85.

A. Yes; the same thing.

Q. And also Commission's Exhibit No. 30, which has heretofore been used—on the right side there (indicating).

A. The same thing.

* * * * (N. T. pp. 501, 502.)

Q. When did you first come into contact with the word "alpacuna", if you remember?

A. Through a letter from the Federal Trade Commission.

Q. The same as to the word "vicuna"?

A. Well, the word "vicuna"—I have a very hazy recollection of vicuna being a very high-priced fabric; that is all. I don't know where.

Q. But you have known of it?

A. That was the connection it had for me.

MR. WILLIAMS: The witness is with you.

Cross-examination.

By MR. McCracken:

Q. You first came into contact with the word "alpaca" through a letter from the Federal Trade Commission?

A. That is correct.

Q. Asking you to testify in this case?

A. No, asking my impression as to what the word meant.

Q. And you answered that it meant those two things?

A. I answered essentially as I have now.

Q. Do you know that vicuna is an animal, Doctor?

A. I don't even know.

Q. You just knew that it was a cloth and a word?

A. To me it would mean a very fine wool cloth, that is all.

Q. Without even knowing what animal it came from?

A. Well, I assume that it came from some particular type of sheep; that is all.

Q. I am going to show you Exhibit No. 25, Doctor, Kann's advertisement of a recent date, November, 1939. I think it is; is it not?

A. December 4th.

Q. December 4th, 1939.

I ask you to read that advertisement and tell us to what conclusion you would come as to the content of this overcoat?

A. Yes. I saw it when it was published, and it interested me on account of this situation.

Q. Yes.

A. My impression—may I take the date line into consideration?

Q. Yes.

A. It was probably put in as part of this hearing.

Q. You think so?

A. It was the first impression I had.

Q. But the second impression you have is, is it not, that it is a perfectly clear description of what is in that overcoat?

A. That is correct.

Q. If I showed you some advertisements which antedated these proceedings that contained that same description; for example, I show you a mat of an advertisement copied as Exhibit C to the answer, and will ask you to look at the date line there, which is April 6, 1938, long before any of these proceedings were started, and it shows the same kind of a description as to the one last appearing, you would not conclude that that arose to meet this hearing, would you?

A. Well, at this time, I would merely wonder when the proceedings began; that is all. I don't know. I am trying to answer your question. I mean, in view of this date, and I was still wondering if the whole proceedings started prior to this date.

Q. And if you were told that the proceedings were started long after the date, you would say that that was an honest and clear definition and description of what is in that garment, would you not?

A. As far as my technical knowledge would permit me.

Q. Without being related to any proceedings?

A. That is correct.

* * * * (N. T. p. 505.)

Q. And you might wonder another thing: Having seen that, Doctor, you might wonder why they brought

these proceedings at all, if you looked at that advertisement, almost two years ago, might you not?

• • • • (N. T. pp. 505, 506.)

MR. McCracken: Yes, and he said very honestly that he would conclude that this advertisement was put in because of these proceedings. That is an advertisement nearly two years old, long before the proceedings. Then I asked him whether he might wonder whether they should have brought the proceedings at all, in view of that advertisement.

• • • • (N. T. pp. 506, 507.)

A. I may.

• • • • (N. T. p. 506.)

Re-direct examination.

By MR. WILLIAMS:

Q. You have answered that question predicated upon the statement of Counsel that this advertisement correctly describes the fibre content of that coat. Will you please examine that advertisement and see whether there is any analysis as to the wool content whatsoever.

TRIAL EXAMINER REARDON: Will you identify that advertisement, please?

MR. WILLIAMS: Exhibit C attached to the answer.

A. Having read this through very rapidly, it states what it would certainly explain, that the fabric is made up of cotton and wool. I see nothing here as to the proportions.

By MR. WILLIAMS:

Q. So that, so far as your remark was concerned, it only bore on the question of the cotton backing, and your testimony did not apply at all as to the wool element in the

case, the various fibres of the wool supposed to be in the coat.

TRIAL EXAMINER REARDON: Do you have the question, Doctor?

THE WITNESS: I am trying to. It is my denseness.

By MR. WILLIAMS:

Q. In other words, reading that advertisement would not change your opinion as to the wool fibre content of the coat?

A. I don't know that I testified as to any particular ideas as to the wool content.

Q. Well, you said vicuna and alpaca. In other words, that would not change your testimony in that respect at all, would it, the fact that there was a cotton backing would not give any explanation?

A. No, it would not change my testimony for the reason that I didn't know what alpaca was. My impression is that it was some sort of a cotton fabric. I didn't even know it was wool.

MR. WILLIAMS: That is all.

Re-cross-examination.

By MR. McCracken:

Q. It is necessary for me to ask you another question, as long as this one has been raised. This one dates back, Commission's Exhibit No. 16, to November 19, 1937. That is a little over two years ago, and I call your attention to the fact that on the right side of that advertisement there appears the description of the hairs of four different animals, the alpaca, the guanaco, the angora, and the sheep. Reading that advertisement, which was published more than two years ago, you certainly would not come to the conclusion that there was any vicuna in that garment;

would you? It carefully shows what the animals are there.

A. I wouldn't be able to come to that conclusion, because the word "vicuna" meant to me a fabric rather than an animal.

Q. Rather than an animal?

A. Yes; but I wouldn't have known what the animal was from which vicuna came.

Q. And the vicuna might be made from the hair of any of these animals, so far as you know?

A. It might have been a combination that had silk in it, so far as I know.

• • • • (N. T. pp. 509, 510.)

ROBERT K. KOONTZ was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name, sir, your address and business connection.

A. Robert K. Koontz, Woodward & Lothrop.

Q. That is in Washington?

A. Yes.

Q. Washington, D. C.?

A. That is right.

• • • • (N. T. p. 510.)

Q. Woodward & Lothrop is what kind of a store?

A. A department store.

Q. One of the largest in Washington.

A. One of the largest in Washington.

Q. What is your connection with that store?

A. Buyer of men's clothing.

Q. How long has that store been operating here in Washington, or, rather, how long have you been connected with it?

A. I have been connected with it for 27 years.

Q. Will you examine these three pictures of a store window, Commission's Exhibit No. 77 showing the general window, and two following showing the details in some respects of that, and state, if you are able, to what conclusion you would come as to the fibre content of those articles so advertised?

A. Well, to me, of course, it would only identify certain manufacturers' coats. "Alpacuna" is a registered name. I do not have that particular manufacturer's coat.

Q. What implication would there be as to the fibre content, from that name?

A. I have always known the fibre content of this coat. That would not make any impression on me whatever. I simply recognize it.

Q. What are those two coats? Take the top coat first.

A. I knew, of course, that they put cotton in the heavy coat, in order to give it strength and weight.

Q. That is the overcoat you refer to.

A. Yes, the overcoat.

* * * * (N. T. p. 512.)

Q. Aside from your actual knowledge of that coat, seeing that name there as it appears in these advertisements, what would that imply as to the fibre content, if anything?

MR. McCracken: I object to that. The man has already testified as to the effect in his mind.

A. I personally never gave it any thought.

By MR. WILLIAMS:

Q. You never gave it any thought?

A. No.

Q. What contact have you had with the alpacuna overcoat?

A. It was presented to me several times.

* * * * (N. T. pp. 512, 515 inc.)

Cross-examination.

By MR. McCracken:

Q. What he is trying to get you to say is, Mr. Koontz, the man who calls his top coat "alpacuna", the top coat being all wool, has no right to call his overcoat "alpacuna", if the overcoat has cotton backing. Is that your understanding of what he asked you?

A. Yes; but I also answer that by saying that in order to bring the weight down certain fibres could be left out of it.

Q. And other fibres put in?

A. That is right.

Q. In other words, it is quite common for a trade name to be applied to various garments?

A. That is right. I only recognized it as a trade name.

Q. And this is a trade name?

A. That is right.

Q. And the fact that a man makes an alpacuna overcoat, with a cotton backing, does not prevent him from making an alpacuna top coat without a cotton backing?

A. That is right.

Q. And that is quite common in the trade?

A. That is right.

* * * * (N. T. p. 516.)

By Mr. McCracken :

Q. This term "alpacuna" overcoat is a well known name, is it not, in the United States .

A. That is right.

Q. It is a widely sold garment ?

A. That is right.

Q. And it is known to the trade to have a cotton backing; is it not?

A. I couldn't answer that; it is known to the trade?

Q. Yes; to the trade.

A. Well, I couldn't answer that.

Q. You know it?

A. I know it; yes.

• • • • (N. T. pp. 517, 518.)

JAMES BERRALL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By Mr. WILLIAMS:

Q. Will you please state your name, address, and business connection?

A. James Berrall, 615 Colorado Building, Washington, D. C.; civil engineer.

Q. Mr. Berrall, I hand you three photographs, being, first, Commission's Exhibit No. 77, the window of a store in Washington, and the other two being detail pictures of articles in that window. Will you please examine them and see what inference you make, if any, from that examination, as to the fibre content of the articles advertised?

A. I would say that they are a mixture of alpaca and vicuna.

Q. And may I ask you the same question as to Commission's Exhibit No. 84?

A. The same answer.

Q. I will direct your attention to Exhibit No. 85, the Daily News Record, and propound the same question to you.

A. I would still think it was a combination of those two fabrics.

Q. May I ask your attention to Commission's Exhibit No. 30, which is the Kann's advertisement referred to heretofore, and I will ask you to make a like examination and answer the same question.

A. The same answer.

Q. Where did you first come into contact, if you remember, with the word "vicuna"?

A. "Vienna"—I have read of that. My impression is that it is some kind of a sheep.

Q. You do not remember where you first contacted it?

A. No, sir; I have read of it.

Q. You have read of it?

A. Yes.

Q. One of the gentlemen said he discovered it in school the first time. You do not remember that far back?

A. No, I do not.

Q. But you have known it for some time?

A. Yes. My impression was it is more or less a costly fur that women trimmed garments with.

• • • • (N. T. pp. 520, 521.)

Cross-examination.

By MR. McCracken:

Q. Don't you know that manufacturers often give several trade names to the same article, depending on where they sell it?

A. No, I do not.

Q. You don't know that?

A. No.

Q. Where did you first hear of this Alpacuna overcoat?

A. When the question was asked me from the Commission.

Q. They wrote you a letter and asked you what it meant to you?

A. Yes, exactly.

Q. And without knowing much about what vicuna was, the name remained in your mind as something that is a cloth.

A. Alpacuna, you mean?

Q. No. When you were trying to make out what alpacuna was.

A. Yes.

Q. What the word "alpacuna" meant.

A. Yes.

Q. What implication did it have to you?

A. That it was an alpaca goat in South America, and this vicuna was some kind of lamb's wool, as I take it, and I would infer from the way the word is made up, half alpaca and cuna, it was a combination of two fibres or wools or hairs, or whatever they are.

Q. You would infer that, without knowing whether the vicuna is a fur or a hair or a wool, would you not?

A. Yes.

Q. Just from the sound, in other words?

A. Yes. Well, vicuna is some kind of a sheep, then, I take it.

Q. Now, I show you this advertisement, as I have shown others, Exhibit No. 25, and I will ask you to look at the advertisement, and, having looked at it, tell me whether there is any doubt, after you have read it, as to what the content of this fabric is?

A. "Alpacuna" is a registered trade name and is composed of alpaca, wool, and mohair pile on cotton back".

Q. Correct.

A. And I have seen that advertisement.

Q. After having read that advertisement, there is no doubt left in your mind as to what the content of the garment was; is there?

A. Not from reading that, no.

Q. In other words, it clearly appears that there is no vicuna there, unless vicuna is mohair.

A. Well, I don't know about that.

Q. Do you happen to know how the Federal Trade Commission happened to get your name and write you a letter?

A. I have no idea.

Q. It came out of a clear sky?

A. Clear sky.

Q. Well, I suppose you are a prominent citizen. In that letter or in any conversations with these gentlemen prior to your being called to the stand, was the name "vicuna" suggested to you?

A. Not at all—not until I came up here. I didn't know what this was all about.

• • • • (N. T. pp. 523, 524, 525.)

GARY TRIPLETT was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name, address, and business connection.

A. Gary Triplett, men's clothing store, 3130 Wilson Boulevard, Arlington, Va.

Q. What sort of a store is that, Mr. Triplett?

A. A clothing store—men's clothing store and furnishings.

Q. How long have you been in the clothing business?

A. Two years.

* * * * (N. T. p. 526.)

Q. I hand you three photographs taken of a window in Washington here, the first being an ensemble, Commission's Exhibit No. 77, showing certain overcoats and top coats. Will you examine those three advertisements and state what you gather from them as to the fibre content of those coats, if anything?

A. Well, what I would gather would be my knowledge of alpacuna. The only thing I know about it is—I didn't know a thing about alpaca, but the vicuna, I knew that that was a wool from a South American animal, because I happened to buy a coat of that type, and I gather from this that there was some vicuna wool in it.

* * * * (N. T. p. 527.)

Q. I now call your attention to Commission's Exhibit No. 84, the Hartford Times, and ask you to examine it and answer the same question.

A. Well, I would gather that this coat was an alpacauna, and that they made no other coats, except the alpacauna coat.

Q. And what would be your deduction as to the fibre content, if any?

A. Well, the only deduction I could make would be that not knowing what alpaca was, it would be made of some vicuna wool.

Q. And I will ask you the same as to Commission's Exhibit No. 85, the Daily News Record, heretofore used.

A. I would say the same thing.

Q. The same thing?

A. Yes.

Q. And I ask you the same as to Commission's Exhibit No. 30, the Kann's advertisement, heretofore used. That is Commission's Exhibit No. 30.

A. This only tells me the trade name in this particular ad. All I could get out of this would be the trade name. If I knew what the alpacuna—or the alpaca—rather, and vicuna were, I would know. I would gather it would be a combination of the two.

Q. But you were familiar with the vicuna?

A. Yes. All I could gather from this is that there would be vicuna wool in the coat.

* * * * (N. T. pp. 528, 529.)

Cross-examination.

By MR. McCracken:

Q. Are you in the clothing business?

A. Yes.

Q. And you are not familiar with the alpacuna overcoat except one you bought?

A. Yes, that is right. I do not handle overcoats.

Q. And the only one you know is the one that you bought?

A. That is right.

Q. Now, you say that you are familiar with the term "vicuna" but not with the term "alpaca".

A. That is right.

Q. Do you know what vicuna^o is?

A. All I know is what I was told when I bought that coat. That is, I have not gone into it any further.

Q. What were you told?

A. Told it was a vicuna wool-bearing South American animal. That is what the coat was made of.

Q. Somebody told you that up in New Haven?

A. Yes, sir.

Q. Told you just what the coat was made of.

A. Yes.

Q. And did he tell you anything else with regard to it?

A. No.

Q. You had never seen the advertisement of the coat?

A. I have seen the ads but never paid any particular attention to it—only read it through. When I looked at the ad I looked at the trade name and the price and the store.

Q. You never heard of "vicuna" until this man spoke to you about it when you bought this coat, any more than you had ever heard of alpaca?

A. No. That is right.

Q. So that the word "alpaca" would not have meant anything to you if it had not been for what this man told you?

A. That is right.

Q. By the way—this may not have anything to do with the case—how do you like that alpaca overcoat?

A. Very much.

. . . . (N. T. p. 531.)

Q. How long have you been wearing this overcoat?

A. I have had it since about 1934.

Q. Five years.

A. Yes.

Q. Is it an especially warm coat?

. . . . (N. T. pp. 531, 532.)

Q. I want to ask you whether it is a peculiarly warm comfortable coat.

A. Yes, it is.

Q. The fact that it has a cotton back, while it may not have been known to you, does not prevent it from being a good warm coat, does it?

A. No.

Q. I want to ask you to look at that advertisement, and tell us whether or not, from reading that advertisement, you have any doubt about what the contents of the coat were. I am showing you Exhibit No. 25.

A. What was the question?

Q. There is no doubt at all, having read that advertisement, as to what the contents of the coat are, is there?

A. That is right.

Q. "Alpaca, wool, and mohair pile on cotton back". That is perfectly clear, is it not?

A. Yes.

Q. It is in large type.

A. Yes.

• • • • (N. T. p. 533.)

CLARENCE GROSNER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name for the record, and tell us your business connection?

A. Clarence Grosner, president of the Raleigh Haberdasher, Washington, D. C.

Q. I believe the record shows that is a large department store, or men's clothing store.

A. Yes, men's store.

Q. How long have you been doing business there?

A. Since 1911.

Q. How long have you been in the clothing business?

A. Since 1911.

Q. Are you familiar with the alpaca coat, Mr. Grosner?

A. Only in general terms.

Q. Only in general terms?

A. Yes.

Q. What do you understand to be the fibre content of that coat?

A. Never gave it a thought. You are looking at me in a manner—

Q. I think, Mr. Grosner, you say you do not know what the content of that cloth is?

A. To be perfectly honest, I don't know.

* * * * (N. T. pp. 535-550 inc.)

Cross-examination.

By Mr. McCracken:

Q. You would not attempt to tell a salesman all of the fabrics or all of the ingredients in all of the fabrics in all of the goods they sell?

A. No, sir.

Q. As to this letter that you wrote that Judge Williams has shown you you obtained that information from someone that you do not even know the identity of?

A. That is right.

Q. And you have not the slightest idea of whether the information is correct or incorrect?

A. I do not have the slightest idea whether it is correct or incorrect.

Q. And to you the word "alpacuna" means nothing but a trade name?

A. It is to my mind a trade name. That applies to all soft fleece coats.

Q. You are familiar with the name as applied to the garments even though you do not sell them?

A. Right; that is correct; yes.

* * * * (N. T. p. 551.)

Re-direct-examination.

By Mr. Williams:

Q. It does mean to you that it is soft wool fleece coat?

A. A fleece coat; yes.

Mr. Williams: That is all.

Re-cross-examination.

By MR. McCracken:

Q. You would not be surprised to know that it had cotton back; would you?

A. Not particularly.

By MR. WILLIAMS:

Q. Well, but you would be surprised, even though not particularly.

MR. McCracken: Oh, now, now.

By MR. WILLIAMS:

Q. Would you be honestly surprised if you found that the coat had the back as advertised that that coat has?

A. No, I would not be.

Q. You said you would not be particularly surprised.

A. I will leave out the word "particularly".
would not be surprised.

* * * * (N. T. pp. 552, 553.)

S. E. COHEN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name, your address and business connection?

A. S. E. Cohen, Wilson Boulevard and Highland Streets, Arlington, Va.

Q. What is your type of business, sir?

A. Retail clothing, shoes, and furniture.

Q. How long have you been in such business?

A. Twelve years.

Q. I hand you three photographs, Commission's Exhibits 77, 78, and 79, of a store window, the first one being the ensemble, and the others are details thereof. Will you please examine them and state, if you can, what the implications are as to the fibre content of those coats?

A. This does not appear to have any reference to the fibre content.

Q. Do you see any name on the coat?

A. Yes.

Q. What does that apply to you, if anything—"alpaca"?

A. It doesn't apply anything except, so far as the retail clothing business is concerned, the various clothing manufacturers that make these fleece coats. That is this type of name usually pertains to a fleece coat. For example; L. Greif & Brother use the trade name "angopaca". Another concern manufactures "al pallano". I don't happen to carry it. Hart, Shaffner & Marx, that Mr. Grossner just mentioned a moment ago, and which I also happen to carry, put out a fleece coat under the name of "Ramble".

Q. What do you mean by a fleece coat?

A. A fleece coat is a coat with pile in it. In other words, there are dozens of trade names—

Q. Is not an all-wool coat a fleece coat, too?

A. Yes.

Q. And "fleece" means hair or wool, whatever you choose to call it, of the animal?

A. No, fleece means the nature of the garment. A fleece coat may be a cotton coat of any kind.

Q. Is not fleece the coat of the animal?

A. Another thing: When I use the word "fleece", the word "fleece" means the coat has a pile.

Q. Don't they use the word "fleece", whether they have a pile—

A. Of course, we use the names that are used in the trade. A fleece coat ordinarily refers to a coat with pile on it.

Q. Does fleece necessarily imply that it is a pile coat, or, rather a wool coat?

A. Fleece or pile has nothing to do with whether or not the coat happens to be a wool coat. It is simply the kind of cloth. Well, you can have a covert; it is a hard finish cloth, or a cheviot, which is another cloth.

Q. I am talking about a fibre. Do you mean to say that, without specifying some other fibre, when you say "fleece", you do not mean wool? Is that what I understand you to say?

A. No, no.

Q. You mean wool, don't you?

A. When I say "fleece", I do not describe the content of the coat. I describe the cloth.

* * * * (N. T. p. 555.)

Q. You are familiar with the coined word "alpaca-na"?

A. Oh, yes.

Q. And you are also familiar with the word "vicuna"?

A. No.

Q. You do not gather any implication from the word "alpaca-na" as to the fibre content at all?

A. No. I regard that simply as a trade name.

Q. Simply as a trade name.

A. Yes.

Q. And there is no implication at all as to the content, you say, by the use of that name?

A. Almost every clothing manufacturer or manufacturer of top coats implies some sort of trade name. To my mind, that is not implied, no.

Q. May I ask you this: Do you recall a young man who called at your place of business on November 16, 1939, and asked you about this coat?

MR. McCracken: I object to him cross-examining this witness. You called this man in to tell you the truth, now you are trying to break down your own witness.

TRIAL EXAMINER REARDON: Proceed with the question.

By MR. WILLIAMS:

Q. Do you recall a young man calling on you and representing himself as coming from the Commission?

A. Yes.

Q. And he talked to you about the alpacuna coat on November 16, 1939?

A. I don't recall the date.

Q. And do you remember having a talk as to the meaning of the word "alpacuna"?

MR. McCracken: I object to this whole line of testimony involving these questions. You are ruling on my objection, sir?

TRIAL EXAMINER REARDON: Yes, yes. What was the last question?

(Last question read.)

TRIAL EXAMINER REARDON: I sustain the objection and will note an exception.

* * * * (N. T. pp. 557, 560 inc.)

Q. Have you at any time stated that this alpacuna coat was supposed to be a very fine type of wool, an expensive type of wool?

A. I don't see how I could very well have made that statement, because, to my knowledge, I have never examined an alpacuna coat.

* * * * (N. T. p. 560.)

TRIAL EXAMINER REARDON: Do I understand the witness to say that he does not know what the composition is?

THE WITNESS: That is correct.

• • • • (N. T. pp. 560, 574 inc.)

NATHAN KOSHLAND was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please state your name, sir, and business connection?

A. Nathan Koshland. I am with Isaac Hamburger & Sons.

Q. And what type of business is that?

A. Clothing.

Q. Where located?

A. Hanover and Baltimore Streets.

Q. Baltimore, Maryland?

A. Yes.

Q. That is a large store, one of the leading stores in Baltimore, you would say?

A. I would.

• • • • (N. T. pp. 575, 576.)

Q. I hand you a paper showing an advertisement. What does that appear to be?

• • • • (N. T. p. 576.)

Q. I show you an advertisement of Kann's Depart-

ment Store in Washington appearing in a Washington paper of March 29, 1938, the Washington Star.

* * * * (N. T. p. 576.)

Q. Commission's Exhibit No. 98 for identification, and I ask you—

* * * * (N. T. pp. 576, 577.)

Q. Mr. Koshland, I ask you to examine that advertisement, referred to as Exhibit No. 98.

A. (After examining the exhibit.) Yes.

Q. You notice the name of the coat, alpacuna?

A. Yes.

Q. You notice the animal depicted as part of the trade mark, and so on?

A. Yes.

Q. What implication has that name to you as to the fiber content of those coats?

A. Well, I couldn't say offhand. It is a trade name, and it has the hair fabric.

Q. I did not ask you what the coat has.

A. What is that?

Q. I did not ask you what the coat was composed of; I asked you what the implication of the name was to you as to fiber content.

A. As to the fiber content?

Q. Yes, sir.

A. Well, I would say it was a hair fabric.

Q. Yes, sir.

A. And as to what the contents of that hair, I don't know. That would have to be a chemist or the mill man.

Q. Well, Mr. Koshland, if you will just divorce from your mind the idea that I am trying to pin you down on what the coat is made of literally and actually—

A. Well, it is made of hair fabric of the alpaca, llama—any of those fabrics.

Q. Well, you take the word "alpacuna".

A. Yes.

Q. What do you understand as to the derivation of that word?

A. I should say it is alpaca, mohair and llama.

Q. Well, does the "cuna" mean anything?

A. Cuna. I couldn't say what the definition of "cuna" is. I never heard of "cuna".

Q. Have you ever heard of vicuna?

A. Vicuna I have heard of, but not cuna.

Q. Does that mean anything to you?

A. No.

Q. Well, is it susceptible of a meaning that it is composed of alpaca and vienna?

MR. McCracken: I object to that question.

TRIAL EXAMINER REARDON: That is sustained.

By MR. WILLIAMS:

Q. Now, you think about it. What would be the deduction just from that advertisement? Divorce from your mind what the coat is actually made of. What would that indicate as to fiber content?

MR. McCracken: The witness has already answered that question three times.

TRIAL EXAMINER REARDON: Yes.

MR. WILLIAMS: Well, off the record.

I have a reason to ask it repeatedly. The witness may remember something.

MR. McCracken: I object to it.

I object to this witness being pressed on the subject.

By MR. WILLIAMS:

Q. Well, did you or not recently have a vicuna coat in your window?

A. Oh, yes, we had one, \$750.

Q. Yes.

A. That is a different thing entirely; that is fur.

Q. What do you mean "different thing"?

A. Why, all vicuna is made of all the animal fur; that is, the hair of the vicuna.

Q. You call it hair?

A. Hair of the llama and alpaca.

Q. That is also referred to as wool?

A. That is hair.

Q. But it is also known as wool?

A. Yes. There is different parts of the animal. The down is the hair and the top is the wool.

Q. I understand.

What does a fleece mean?

A. Fleece—a nap garment is a fleece.

Q. Well, fleece ordinarily and primarily means wool.

A. Oh, no. You can get a cotton fleece.

Q. I mean the primary meaning is wool.

A. Wool, yes.

Q. All right.

* * * * (N. T. pp. 580, 581).

Q. If you were to see that advertisement stating "There is only one alpaccuna coat," would you expect to find another coat of exactly the same construction in every particular, cloth and make, under different names in the same town?

A. It could happen; yes, sir.

Q. I did not ask you if it could happen. Would you expect it, as a business man?

A. That there is one particular coat?

Q. I say, would you expect to find exactly the same coat?

A. Yes.

Q. Sold under different names?

A. It could be a different label.

Q. Different trade name?

A. I am talking about the label. That is an alpacuna label.

Q. Yes.

A. Some manufacturer could put that under a different label in the same town, yes.

Q. Under a different name?

A. Yes. It would not be advertised as such, though.

* * * * (N. T. pp. 582, 584 inc.)

Q. How do \$40 overcoats and top coats classify amongst coats? I mean, are they minimum priced?

A. Minimum. They are popular priced.

* * * * (N. T. p. 584.)

Cross-examination.

By Mr. McCracken:

Q. Mr. Koshland, this advertisement that Judge Williams showed you a few minutes ago, marked Commission's Exhibit No. 98, is an advertisement of a top coat, is it not?

A. Yes, sir.

Q. Are you familiar with the alpacuna overcoat as an article of commerce?

A. Yes, sir.

Q. Do you happen to know that the alpacuna overcoat, as distinguished from the top coat, has a cotton backing?

A. Jersey cotton backing.

Q. And that is a well-known fact in the trade, isn't it?

A. Absolutely.

Q. And I show you an advertisement appearing on November 17, 1939, marked Respondent's Exhibit No. 26, being an advertisement of Kann's Store in Washington, and call to your attention the fact that there appears there a diagram showing the animal hair and hide and the alpacuna coat with the hair and the cotton backing.

A. Yes, sir.

Q. Anybody reading that advertisement would think what with regard to the construction of that coat?

A. That it is a cotton back coat.

Q. With the hair exterior?

A. Hair face.

Q. Yes, and you said that even aside from that, that fact is well-known in the trade?

A. Yes, sir.

Q. Those who are familiar with the alpacuna overcoat.

So that, as I gather your testimony, it comes down to this, sir, that the word "alpacuna" means to you a well-known trade name?

A. That is all it means.

Q. Applying to a certain overcoat.

A. Yes, sir.

Q. Widely sold in the trade?

A. Yes, sir.

Q. And knowing of the overcoat in the trade, you know that it has a Jersey cotton backing with a hair exterior?

A. Yes.

Q. And the top coat is all hair?

A. All hair.

• • • • (N. T. pp. 586, 587, 588, 589.)

LUDGER RINFRET, JR., was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

• By MR. WILLIAMS:

Q. Will you please state your full name and business connection

A. Ludger Rinfret, Jr.; Hutzler Brothers Company.

Q. What type of store is the Hutzler store?

A. It is a department store.

Q. And it is one of the largest in the town?

A. One of the largest in the town.

Q. In Baltimore, of course.

What is your particular position?

A. Buying-manager of the clothing department.

Q. How long have you been in that business?

A. Twenty-five years.

* * * * (N. T. p. 590.)

Q. I show you Commission's Exhibit No. 98, Mr. Rinfret, and ask you to examine it.

A. (The witness examines the exhibit).

Q. Now, aside from any actual knowledge you may have of that coat, or what you have learned here today as to the actual content of that coat, what implication has that word "alpacuna" as to the fiber content of an overcoat such as is advertised here?

A. I think it would be alpaca.

Q. What else?

A. And wool.

Q. Well, what other kind of wool?

A. Well, very fine wool.

Q. Can you give the name of it, sir?

A. No.

I am answering as a buyer or as a merchant?

Q. What that implication would be to you.

A. It is a trade name, "alpacuna".

Q. Yes, I understand that. What implication has it as to fiber content?

A. Well, it would be a very good, serviceable coat, made of good cloth.

Q. What does "a-l-p-a" mean to you? What does it imply to you?

A. It implies a very fine wool coat.

Q. Do you mean a wholly wool coat?

A. Pardon me?

Q. Do you mean a wholly wool coat? That is what it means to you?

A. Well, it looks like a wool coat.

Q. Yes. And what does it imply to you as to the fiber content?

* * * * (N. T. p. 592.)

A. As I said before, I would imply, being from a customer's standpoint, a buyer's standpoint, it is a very fine coat made of hair fabric.

By MR. WILLIAMS:

Q. Well, wouldn't it give you any indication as to the fiber of the coat?

A. Well, not necessarily.

Q. I did not mean necessarily, but would it in some way do it?

A. It is an alpaca coat.

Q. What else?

A. Well, it doesn't say.

Q. What does "cuna" refer to there?

A. Well, it could mean a trade name.

Q. What does it mean in connection with fibers?

A. Well, I am not a manufacturer, but as long as I know the coat—I am not familiar with the coat, by the way; I am answering the questions the best way I can.

TRIAL EXAMINER REARDON: Does the word "alpaca" indicate to you anything concerning the material of which the coat is composed, that it refers to?

THE WITNESS: The first word might.

TRIAL EXAMINER REARDON: Does it? Yes or no. Does it indicate to you as to the material of which the coat is made?

THE WITNESS: I would answer it this way—

TRIAL EXAMINER REARDON: Well, yes or no. It either does or does not indicate anything to you as to the material of which the coat is made.

THE WITNESS: I would say no.

* * * * * (N. T. pp. 593, 595 inc.)

MRS. SUSAN G. FORD was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Mrs. Ford, will you please state your name and business connection?

A. Mrs. Susan G. Ford.

Q. What is your business connection?

A. Merchandise manager, the Better Business Bureau.

Q. Of Baltimore City?

A. Of Baltimore City.

* * * * * (N. T. pp. 596, 597.)

Q. Will you state what, if any, meaning you gather from the name of that coat as to the fibre content of the coat?

A. That it would be composed of alpaca and vicuña, from the trade mark here (indicating), and, then up here (indicating), where it says "Four famous fleeces."

Q. So from that advertisement you would say it was made of/at least part of these four fleeces?

A. Absolutely.

Q. And would you say there was any cotton in connection with a coat of that name?

A. No, I would not.

Q. Of that label?

A. No, I would not.

Q. I show you Commission's Exhibit No. 31, an advertisement appearing in the Detroit, Michigan, Free Press of November 4, 1936, and ask you to examine that and see what meaning you would gather from that advertisement as to the fiber content of that coat, advertising an overcoat.

A. The same thing.

Q. And I ask your attention to Commission's Exhibit No. 40, an advertisement from the Meriden, Connecticut, Journal, December 18, 1935, and ask you what implication that has or meaning as to the fiber content.

A. Well, the same, because the trade mark is right there (indicating).

* * * * (N. T. pp. 598, 599.)

Q. You are familiar with vicna, I understand. Is that a better quality wool, or is the preference over that ordinary wool?

TRIAL EXAMINER REARDON: By whom?

Q. By the general public, from your observation and experience.

A. It is considered one of the finest wools.

Q. What about alpaca?

A. Alpaca is very good.

Q. How would a combination of alpaca and vicna and some other wool stand with regard to an ordinary wool coat?

A. I would consider it better.

Q. How about vicna and alpaca in combination with other wool as against alpaca and other wool?

TRIAL EXAMINER REARDON: This is your personal opinion?

THE WITNESS: This is personal, yes.

* * * * (N. T. pp. 600, 601.)

Cross-examination.

By MR. McCracken:

Q. Mrs. Ford, you say you have been associated with the Better Business Bureau for the past ten years?

A. Yes.

Q. Have you ever been a manufacturer of overcoats?

A. No.

Q. Have you ever been a merchandiser of overcoats?

A. No.

Q. Have you ever been a buyer of men's clothing, men's overcoats?

A. No.

Q. Your knowledge, therefore, on this subject, arises only from your experience with the Better Business Bureau, your professional knowledge, I mean?

A. Professional knowledge, yes.

Q. Did you have the privilege of being in this room when the two previous witnesses, Mr. Koshland and Mr. Rinfret, testified?

A. Yes, sir. I just came in when one of them was on the stand.

Q. Did you hear Mr. Rinfret's testimony as to the meaning of the word "alpacuna"?

A. I did not hear all of his testimony.

Q. You did not hear these gentlemen, then, one of whom has been in the business of buying clothing for 35 years, and the other for 25 years, both testify that the word "alpacuna" was to them merely a well-known trade name? You did not hear that?

A. I could not understand what Mr. Rinfret said—every word of his.

Q. Yes?

A. The other gentleman—

Q. You did not hear at all?

A. I did not get it all. I was sitting back and did not get it all.

Q. And you did not hear both gentlemen testify that the word—

* * * * (N. T. p. 603.)

Q. (Continuing)—that the word meant merely a garment of various kinds of hair?

A. Yes, I heard that.

Q. You heard that?

A. Yes.

Q. And in view of the fact that these gentlemen have had, one of them 35 years practical experience in buying men's clothes, and the other one 25 years experience, and that they both testified unhesitatingly to that effect, you still think that the word means what you say it does, a combination of alpaca and vicuna, to those in the trade?

A. I do.

Q. Now, when did you first become interested in this question of alpacuna, may I ask, Mrs. Ford?

A. Yes. I was asked yesterday my opinion if I saw that word.

Q. By whom were you asked?

A. By Mr. Williams.

Q. And would you just be kind enough to give the conversation between you and Mr. Williams on that subject?

A. Yes. He asked me what I would consider when I saw that word, and without any hesitation I said, "From my knowledge, I would say alpaca and vicuna."

Q. And why did you come to that conclusion? Have you ever seen a coat that was made of alpaca and vicuna, to your knowledge?

A. No, I have not.

Q. And therefore your conclusion was because there were certain letters in this word, some of which appear in the word "alpaca" and some of which appear in the word "vicuna": is that correct?

A. Mostly from my knowledge. The trade marks are usually taken from the contents, or a coinage of something.

Q. It is in evidence in this case that when that word was coined the term "alpaca" was taken and the "u-n-a" was the Latin word for one, and that the term was coined in connection with the slogan "There is only one alpacuna overcoat." Would that change your mind?

* * * * (N. T. pp. 604, 605.)

A. No, because I would consider a trade mark of that type for an overcoat would certainly be some description of the material, knowing that there is such a material as alpaca.

By MR. McCracken:

Q. In other words, when a term is used, which is well-known, which refers to something actually in the world, as a trade name, then you think that it would naturally refer to that trade name, would you?

A. If it would be familiar, describing anything that was familiar in material content.

Q. Yes.

A. As we are speaking of now.

Q. In other words, Gold Dust Washing Powder undoubtedly contains gold?

A. No.

Q. But there is such a thing as gold, isn't there?

A. Yes.

Q. And the words "Gold Dust" should naturally carry the reader's mind to gold, shouldn't it; yet there is no gold in Gold Dust Washing Powder?

A. No, but there would be a reason for using "Gold Dust" just as there would be a reason for using your trade name.

Q. Well, why would there be a reason with respect to that when there is no gold in it? Will you tell us that?

A. No, I don't know.

Q. Of course there must be ivory in Ivory Soap, mustn't there?

A. No.

Q. Are you quite sure there is no ivory in Ivory Soap, Mrs. Ford?

A. (No answer.)

Q. Ivory is a well-known article, isn't it?

A. I know that.

Q. Well, is it right to say that when a well-known trade name appears which refers to some substance, metal or mineral substance; that that substance is in that article?

A. I should say it must be in there.

Q. Then, just what do you conclude for the necessity of having vicuna hair in a word that has three letters, u-n-a, in it?

A. I was asked my opinion, and that would be my opinion.

Q. Well, in view of what I have just discussed with you, is it still your opinion that vicuna is in that coat?

A. I said that is my opinion, if I saw that trade name, that it would be composed of alpaca and vicuna.

You are speaking of a cloth. It has to have some material content, and I know of the animals alpaca and vicuna; naturally I would think that that was what was in the overcoat.

Q. Do you know anything about the value of vicuna hair?

A. No, I can't say that I do.

* * * * * (N. T. p. 607.)

Q. I will ask you this question:

Do you happen to know that a vicuna overcoat, of which there are a few in the United States, sells, according to a witness who testified this morning, for \$750?

* * * * * (N. T. p. 607.)

Do you happen to know that?

A. No.

* * * * (N. T. pp. 608, 609.)

Q. If you did know that an overcoat, as testified to by a witness this morning, an all-vicuana overcoat, sold for \$750, would you expect to find vicuana hair in an overcoat selling for \$40, as a practical matter?

A. I would question it, of course.

Q. I thought so.

* * * * (N. T. p. 609.)

Re-direct-examination.

By MR. WILLIAMS:

Q. And also if you saw one that was advertised for \$250, that would eliminate the necessity for questioning it, wouldn't it?

* * * * (N. T. p. 610.)

Q. In other words, there are also coats advertised for \$250 and \$300 containing vicuana.

A. He said a vicuana coat.

Q. A vicuana coat sold for \$250 and \$300. That would eliminate your curiosity? In other words—

TRIAL EXAMINER REARDON: In other words, Mr. Williams is asking you now, where you were asked if a coat were sold as a vicuana coat for \$750 you would question whether a \$40 coat would have vicuana.

THE WITNESS: Absolutely.

TRIAL EXAMINER REARDON: Now, if the coat were sold for \$250 and represented to be vicuana, would that also raise the question in your mind as to a \$40 coat having vicuana in it?

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: The answer is the same with respect to the \$750 as to the \$250.

* * * * (N. T. p. 610.)

Re-cross-examination.

By MR. McCracken:

Q. Glancing at this advertisement, Mrs. Ford, which is Respondent's Exhibit No. 26, there seems to be no doubt whatever, does there, when you look at that as to the fact that there is a cotton backer on that overcoat plainly drawn?

A. It says here that it has a cotton back.

Q. Yes, it has a cotton backing.

A. Yes.

Q. So this overcoat is advertised in Kann's Department Store in Washington as of November 27, 1939, as an overcoat with a hair exterior and a cotton back, isn't it?

A. That is what it says.

Q. Yes.

Now, it is also advertised—would you just be kind enough to look up there (indicating) and read that first paragraph in the advertisement?

TRIAL EXAMINER REARDON: Respondent's Exhibit No. 26.

Q. Respondent's Exhibit No. 26. That shows the content of the coat, doesn't it?

A. It tells you there.

Q. The alpacuna is a registered trade name and is composed of alpaca, wool, and mohair pile on cotton back. There is nothing said about vienna there, is there?

A. No.

Q. So anyone reading that advertisement would know exactly what an alpacuna overcoat is made of, if they believed the advertisement, wouldn't they?

A. Well, I would—

Q. Well, wouldn't they?

A. If they read the whole advertisement.

Q. If they read the advertisement, or if they read only the first paragraph of the advertisement, they would know that it is made of alpaca, wool and mohair pile on cotton back, wouldn't they?

A. That would have to be qualified. They would have to know what "alpaca" meant.

Q. If they read that first paragraph, they would know what Alpacuna meant?

A. Yes.

Q. Do you happen to know that the Better Business Bureau in Washington has approved that particular advertisement, and so testified on the stand?

A. No. The question has never come up.

* * * * (N. T. pp. 612, 613.)

THOMAS P. ABBOTT was thereupon called as a witness on behalf of the Commission and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Mr. Abbott, will you please state your full name and business connection here in Baltimore?

A. Thomas P. Abbott; president, Stewart & Company, department store.

Q. Stewart & Company is one of the large stores in Baltimore?

A. One of the large stores.

* * * * (N. T. pp. 613, 614.)

Q. I ask your attention, sir, to Commission's Exhibit No. 25, ask you to examine it and state what meaning you gather from it as to the fiber content of those coats advertised.

A. It would not mean anything to me except a trade name.

Q. Read down the ad. You notice it says:

"Here's a statement of facts . . . 'cuna' and 'alpa' can be combined only one way to spell alpacuna." That is an advertisement of the Metropolitan Store.

. . . . (N. T. pp. 614, 615.)

Q. You say that "alpacuna" does not mean anything at all?

A. Nothing beyond a trade name.

Q. Well, what would that trade name be made up of, from your knowledge of the business, and so on?

A. I will tell you very frankly, when I got the letter from the Commission I had never heard of vicuna before. I had to look it up in the dictionary to see whether it is a fur-bearing animal, or hair; I did not know.

. . . . (N. T. pp. 615-617 inc.)

Q. Do you care to make any change in your testimony as to the understanding to be gathered from that word "alpacuna" as to the fiber content of the coat?

A. No, sir.

. . . . (N. T. p. 617.)

Q. Would you gather from that as to whether or not that was an all-wool coat, or part cotton coat, or what?

A. No, it would not mean anything to me, except a trade name.

. . . . (N. T. pp. 618, 620 inc.)

Q. Mr. Abbott, in an advertisement where the word "warmth" is advertised as one of the features of the coat, would that be commonly associated with cotton or would that be commonly associated with wool?

A. It might be wool rather than cotton, or it might be a mixture.

Q. Yes.

* * * * (N. T. pp. 621, 622.)

Q. Would you expect normally to find a coat advertised as "Only one Alpacuna coat," and then to find on the same street a coat named "Alperu" and another one named "Andesian"?

A. That is a common practice, yes.

Q. Sir?

A. It is a common practice. Manufacturers make up the same thing for different stores and put a different name on it.

Q. You do find that?

A. Yes.

Q. Do you think the public would expect to find, where a coat is advertised as "There is only one Alpacuna coat,"—to find the same coat on the street?

A. Yes. It exists.

Q. I did not ask you if it exists. Do you think the public would expect that?

A. Yes.

Q. You do?

A. Yes. It is the common practice.

* * * * (N. T. pp. 622, 624 inc.)

EDWIN MORGENTHAU was thereupon called as a witness on behalf of the Commission, and having been first duly sworn, testified as follows:

Direct-examination.

By MR. WILLIAMS:

Q. Will you please, sir, state your full name and business connection?

A. Edwin Morgenthau, merchandise manager of ladies' ready-to-wear, O'Neill & Company, Baltimore, Maryland.

* * * * (N. T. p. 625.)

Q. Mr. Morgenthau, would you be kind enough to examine Commission's Exhibit No. 25, which is the ad that I just last referred to, a 1935 ad of the Metropolitan Store, with the idea of stating any meaning it has to you as to the fiber content of the overcoat advertised? I ask your attention to the trade mark, and also the part that I read just a moment ago, as to "c-u-n-a" and "a-l-p-a", and then the whole ad.

A. The ad conveys to me that the trade name "Alpacuna"—that the fabric is made up of alpaca and vicuna or a content of those two.

* * * * (N. T. pp. 625, 632 inc.)

Cross-examination.

By MR. McCracken:

Q. Mr. Morgenthau, you have said that the word "Alpacuna" means a combination of alpaca and vicuna, to which conclusion I presume you arrived by taking the word?

A. Yes.

Q. Now, I call your attention to Respondent's Ex-

hibit No. 26, which is an advertisement that appeared in Washington, Kann's Department Store, under date of November 17, 1939, the first paragraph of which contains, does it not, a definition of the hairs that are in this coat?

A. Yes.

Q. Having read that, you now know what is in the alpacuna fabric?

A. Yes.

Q. So that you no longer are under the impression that it is vicuna.

As a matter of fact, does your store deal in men's wear or all ladies' wear?

A. Ladies' wear.

Q. Do you sell this fabric at all, the fabric out of which the Alpacuna overcoat is made?

A. (The witness shook his head.)

Q. Do you sell the ladies' Valcuna sweater? Do you know that word at all?

A. Yes.

Q. Do you know what it means, what is in it?

A. Yes.

Q. What is it?

A. The Valcuna usually has no vicuna at all. It is a cuna type of fabric.

Q. And what is a cuna type of fabric?

A. It is a misnomer.

Q. Yes. What is it in the trade?

A. In the ladies' trade it is usually known as a soft type of sheep hair.

Q. Yes, but not necessarily and usually not with vicuna in it.

A. True.

Q. It is a type of fabric?

A. Yes.

Q. It might be made from mohair?

A. Yes.

Q. And often is.

* * * * (N. T. pp. 633, 635 inc.)

WALTER SONDHEIM was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follow:

Direct-examination.

By MR. WILLIAMS:

Q. Mr. Sondheim, will you please state your name and business connection?

A. My name is Walter Sondheim, and I am vice-president and treasurer of Hochschild, Kohn & Company.

I would like to make a qualifying statement, if you would allow me to do it.

Q. Certainly.

A. I am not a clothing buyer nor am I a clothing merchant.

Q. Yes, sir. That is all right.

* * * * (N. T. pp. 635, 636.)

Q. May I ask your attention, sir, to Commission's Exhibit No. 25, ask you to examine that advertisement of the Metropolitan Store, issued 1935, as to overcoats, and call your attention to the name and to the label and generally to the whole advertisement.

A. Yes.

(After examining the exhibit) Well, I would say it was only a trade name. There is nothing in the advertisement to indicate at all what it is made of.

Q. I ask your attention to what is part of the trade name of that overcoat (indicating), and ask you what you see in that.

A. I see two mountains and some sort of an animal between them.

Q. What does it indicate to you as to the type of animal it is?

TRIAL EXAMINER REARDON: Does it indicate to you anything?

THE WITNESS: It does not indicate anything definite to me.

By MR. WILLIAMS:

Q. What would it indicate to you as to fiber content as between wool and cotton?

A. I think there is nothing to indicate in this advertisement whether the garment is made of wool or cotton. I haven't seen anything.

Q. Will you read the name "Alpacuna" and see what the sections of the word are?

A. There is nothing in those two parts of the word which would indicate to me that the garment was made of wool, cotton or some other fabric.

Q. Well, what would be your idea as to the formation of that word, as to what it was derived from?

A. I don't know. I know a great many trade names. I have been conversant with many of them over a length of time, and you can't tell where they came from. Some of them are euphonious words.

TRIAL EXAMINER REARDON: The question is does that word give you any indication as to how it is composed?

THE WITNESS: No, I would say not.

By MR. WILLIAMS:

Q. Are you familiar with the alpaca?

A. With the alpaca?

Q. Yes.

A. Yes.

Q. Vicuna?

A. Yes.

Q. I mean the names. Are you familiar with the names?

A. Yes.

Q. Being familiar with them, you say that that name attached to an overcoat does not give any indication as to the fiber content?

A. No. My familiarity with trade names and my experience with trade names would not make me believe that that name definitely indicated what the fabrics were—the contents, I should say.

* * * * (N. T. pp. 638 to 666 inc.)

ROBERT W. TEST was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

TRIAL EXAMINER REARDON: This is Mr. Robert W. Test, 908 Maryland Trust Building, Baltimore, Maryland.

Direct-examination.

By MR. WILLIAMS:

Q. Mr. Test, state your business, sir.

A. I am a director of the Better Business Bureau.

Q. How long have you been in such position?

A. Fifteen years.

* * * * (N. T. pp. 666, 667.)

Q. Mr. Test, I show you Commission's Exhibit No. 25, and ask you to examine it, please.

A. (The witness examines the exhibit.)

Q. I ask your attention to the trade mark, the name of the coat, and the advertisement generally.

A. Do you want me to read the whole thing?

Q. I want you to look at it just as you would do to find out what the thing is about.

Now, what meaning, if any, has that advertisement to you as to the fiber content of the overcoat in question?

A. I would think it had some wool of the alpaca, the fiber of the alpaca, and probably the other animal being designated there, a combination of those two.

Q. Two what?

A. The alpaca and the vicuna.

Q. You would think there would be some of those fibers in there?

A. There should be.

Q. As to what else you do not know?

A. They do not mention anything else.

Q. It also has "There is only one genuine Alpacuna." Would that indicate to you that there might be in the same town the same coat exactly in construction in every particular under different names?

A. There might be. It might be the name—that combination of those two wools, but—

Q. But this evidently is a trade name—

A. Yes.

Q. —for an overcoat.

Now, would you expect to find that same material in other coats, exactly the same thing, under different trade names?

A. I don't now. It would depend upon how you would represent it. If I was looking at that, I would expect those two fabrics would be—those two wools would be woven in a fabric under a different name.

* * * * (N. T. pp. 668, 670 inc.)

Q. When you see an advertisement with such a name as Alpacuna, and the animal depicted as being part of the trade mark, and then you see names purporting to be the names of the fibers which did not include vicuna, would you think there was any contradiction between the body of the advertisement and the name?

A. Only that it might be this predominated and the other probably not, less proportion, something of that sort.

Q. Do I understand you to say that you would expect to find vicuna in it?

A. That I would expect to find vicuna?

Q. Yes.

A. With only this illustration?

Q. Well, taking the whole advertisement known as Commission's Exhibit No. 13, do you find any contradiction between the text and the name of the coat and the label or not?

A. This does not mention vicuna at all. It says the angora and the guanaco.

Q. Well, do you find any contradiction between that and the name and the label?

A. There would be. The "cuna" would certainly be a part of the vicuna, not a part of the rest of the name.

• • • • (N. T. pp. 671, 674 inc.)

Cross-examination.

By MR. McCracken:

Q. Mr. Test, you say you are a director of the Better Business Bureau?

A. Yes, sir.

Q. What was your business before you became a director of the Better Business Bureau, may I ask?

A. Sales manager for a wholesale shopping house.

Q. What kind of goods?

A. Ready-to-wear dresses, millinery.

Q. Have you ever been in the men's wearing trade?

A. Only in what you call haberdashery.

Q. Not in overcoats?

A. No clothing.

• • • • (N. T. pp. 674, 675.)

Q. Now, you have told us from looking at these various advertisements that you would expect the name "Al-

pacuna" to indicate a garment containing both alpaca and vicuna hair.

A. Yes.

Q. In any of these advertisements that you saw did the name vicuna appear?

A. No.

Q. So that when you arrive at that conclusion you arrive at it solely, do you not, because you yourself in your mind take apart the word "Alpacuna" and divide it into abbreviations of alpaca and vicuna? That is the only thing that calls it to your mind?

A. Yes.

Q. Now, I call your attention to Respondent's Exhibit No. 26, an advertisement of Kann's store in Washington, appearing under date of November 17, 1939, and ask you to read the first paragraph. That paragraph describes the content of the fabric, doesn't it?

A. Yes.

Q. And having read that paragraph, you know that there is no vicuna in the fabric. "Alpaca, wool, and mohair pile on cotton back;" that is what it is, isn't it?

A. Yes.

Q. And having read that, you discover that you were wrong when you took apart the word "Alpacuna" and concluded that part of it indicated vicuna, don't you?

A. I would like to qualify my answer on that. That is one advertisement. One advertisement does not indicate to the consumer what all of the general advertising preceding it or coming after it means.

Q. We are referring to this particular advertisement.

A. One advertisement. All right.

Q. And you would find that you were wrong in your original derivation of the word "Alpacuna"?

A. I might.

Q. And if all the advertising of the company on that overcoat had that definition in it, there would not be any doubt in your mind, or anybody's mind?

A. Except I would wonder where they got the name.

Q. Well, you would wonder but there would not be any doubt.

A. Yes.

Q. There is testimony which appears in this case from several witnesses that when the name was coined they took "alpac" from the word alpaca and "una," being the Latin word for one, and coupled it with the slogan "There is only one Alpacuna." There is testimony in this case to that effect.

MR. WILLIAMS: The testimony was that that was the way it was coined.

THE WITNESS: Yes.

By MR. McCracken:

Q. That would give you another impression, if you knew that?

A. Well, if I was intelligent enough to know Latin and had that explained to me, I would; otherwise I would not.

Q. Well, let me ask you about this little matter of intelligence, Mr. Test. I rather suspect you are intelligent enough to know Latin. But don't you think as a matter of statistics that there are more people in America who know that the word "una" stands for one in Latin than who know that such an animal as vicuna exists?

* * * * (N. T. p. 678.)

Q. How familiar are you with the animal vicuna?

A. Nothing except through our fur fabric dictionaries.

Q. When did you last have occasion to look it up?

A. Well, I don't handle that end of it as much as Mrs. Ford.

Q. In other words, you looked it up for the purpose of testifying in this case?

A. No. I did not know anything about this case, because I have not been in it at all.

Q. When was the matter called to your attention?

A. Mrs. Ford told me of her testimony.

Q. Mrs. Ford told you?

A. She told me that the matter of the vicuna came into the picture.

Q. How long before this talk with Mrs. Ford had you talked or thought of vicuna?

A. I hadn't thought of it at all.

Q. How long have you known of vicuna?

A. Oh, some time in connection with furs, that is all.

Q. Do you know where it comes from?

A. South America I believe.

Q. And do you know whether it is a wild animal or a domesticated animal?

A. It is a small animal, I believe, something like the sheep family.

Q. Do you know whether its hair is valuable, or otherwise?

A. No, the value of it I don't know.

Q. You don't know?

A. Never had occasion to look into it.

Q. And you don't know whether its hair is durable or soft?

A. No.

Q. Do you know that the word "cuna" as a suffix or a prefix to a word has acquired a trade meaning of a soft, fleecy, pile fabric?

A. No. The trade name is entirely new to me.

Q. And do you know that there are at least 40 or 50 trade names that begin or end with the word "cuna"?

A. No.

Q. In addition to Alpacuna?

A. No.

Q. You never heard of any of those other names?

A. No.

Q. So it is not familiar to you that the name is widely used.

For example, there just happened to come into this room by accident today a garment belonging to a gentleman who is not a witness in this case, but which I now show you, an overcoat, a rather nice overcoat, and in the label there appears the name "velvacuna—genuine velvacuna," with a picture of some high mountains and two sheep-like animals.

* * * * (N. T. p. 680.)

Q. Do you read that name now?

* * * * (N. T. p. 680.)

THE WITNESS: "Velvacuna."

MR. McCracken: Yes.

By MR. McCracken:

Q. Now, what does that name mean to you?

A. It does not mean anything particularly, excepting that I would expect it was a fabric with wool in it.

Q. Why wool?

A. These two animals are represented as being combined in the wool in the coat.

Q. Why did you say "wool" and not "vicuna"?

A. Well, because I use "wool" as a differentiation between cotton. Wool fabric is always something that comes off an animal.

Q. Yes.

Well, is there any more reason to believe that there is wool in a Velvacuna than there is in an Alpacuna? Is there any real difference?

A. This would lead me to believe that.

Q. What, those two animals?

A. Yes.

Q. Very well.

Let me show you advertisements of animals—

TRIAL EXAMINER REARDON: Before you ask about that I would like to ask him this:

Look at that coat and the word which you read, the word "Velvacuna." What do you understand is the material of the fabric in the coat?

THE WITNESS: That is very hard for me to say, sir.

TRIAL EXAMINER REARDON: Have you any understanding as to the material?

THE WITNESS: The thought that I would get is that the fabric was woven from wool into such softness as you might find in velvet.

TRIAL EXAMINER REARDON: But do you have any understanding as to the source of the material in the coat, from the fabric of the coat?

THE WITNESS: Only, as I said, as indicated by the two animals in the trade mark.

TRIAL EXAMINER REARDON: Only in that way.

Well, in that way, what is the source of the material indicated, as you understand it?

THE WITNESS: Wool.

TRIAL EXAMINER REARDON: Any particular wool from any source?

THE WITNESS: I would think that those two animals were put there to indicate to me—

TRIAL EXAMINER REARDON: Have you any understanding as to what those two animals are?

THE WITNESS: One is the llama, and the other one looks like a South American sheep of some kind.

TRIAL EXAMINER REARDON: I see. But you have no understanding, as I get it, with that name on it, except that the fabric material is from a llama and some sheep; is that it?

THE WITNESS: That is what it would indicate to me.

* * * * (N. T. p. 683.)

By MR. McCracken:

Q. Now, I show you the label in the Alpacauna overcoat, also the picture of an animal. It is very similar, is it not, to the animal—

* * * * (N. T. p. 683.)

TRIAL EXAMINER REARDON: So that his testimony will be intelligent on the record, I wish you would get the witness, rather than you, to read the label.

MR. McCracken: Yes,

By MR. McCracken:

Q. Would you be kind enough to read the label?

A. "Alpacauna fabric; warmth without weight."

Q. And a picture of what?

A. And a picture of, I suppose, the alpaca, similar to it.

Q. Having examined that label, can you now tell the Master what that label and the name would indicate that coat was made of, to your mind?

A. Well, I can't say but one animal.

Q. And that would indicate—

A. And that would indicate there is wool from that animal in the coat.

Q. Of what?

A. I suppose representing the alpaca.

MR. McCracken: That is all.

* * * * (N. T. pp. 684-689.)

**5. MOTION TO AMEND THE AMENDED COMPLAINT
TO CONFORM TO PROOF.**

Comes now counsel for the Federal Trade Commission and moves the Commission that the complaint herein, as amended by order of the Commission on November 3, 1938, be further amended to conform to the evidence adduced in the record of the proceeding herein as follows:

1. By striking out all of the last sub-paragraph of Paragraph Three and inserting in place thereof the following sub-paragraph:

“The use of the term ‘Alpacuna’ by the respondent as descriptive of the fabric used in the manufacture of its overcoats and topcoats constitutes a representation by said respondent to members of the purchasing public that said fabric is composed entirely, or at least of a substantial quantity, of the fur, wool, or hair of the Alpaca and the Vicuna, and places in the hands of retailers a means and instrumentality by which such dealers are enabled to increase their own sales by representing that said overcoats and topcoats are all wool and composed entirely, or at least of a substantial quantity, of the fur, wool, and hair of the Alpaca and Vicuna, thus deceiving the purchasing public.”

2. By inserting a new paragraph immediately following Paragraph Four and designating the same as Paragraph Four A, in the following language:

“Paragraph Four A: In addition to the above mentioned advertising matter, respondent attaches a permanent cloth label and a medal, the latter by a string, to each of the topcoats and overcoats, both of which pass thereon to the consuming public. In the

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various advertisements and swatch books and on said labels and medals appears the legend or slogan, 'There is only one Alpacuna coat'. As the topcoats are exposed to ordinary and customary examination by purchasers and are readily discovered to be composed entirely of wool, or wool and a hair commonly classified by a substantial portion of the trade and general public as wool, respondent represents to the purchasers thereof that the overcoats which, as above stated, bear the same name and are sold under the same trademark as the topcoats are of the same composition as the topcoats, when in truth and in fact, as above set forth, the overcoats are composed of approximately one-third cotton. Also, such acts, practices and methods of the respondent supply retailer's means whereby they may, and actually do, make like untrue representations to the ultimate purchasers and consuming public.

"The use of the legend or slogan in the manner above set forth had, and has, the capacity and tendency to mislead and deceive a substantial portion of the purchasers thereof, and supplies retailers with means whereby they may mislead and deceive their customers into the erroneous and mistaken belief that the overcoats are of the same fiber content as the topcoats and are the same in all particulars, except as to weight."

Counsel for the Commission further moves that the testimony heretofore taken in support of the allegations of the complaint as originally drawn and heretofore amended be adopted and considered as testimony in support of the allegations of the complaint as amended upon this motion.

Counsel for the Commission further moves that an order be entered granting leave for the filing of briefs in support of and in opposition to the motion to amend the amended complaint, and that copy of motion to amend and brief in support of said motion be served upon Messrs. Montgomery and McCracken, attorneys of record for respondent, by registered mail, at 1421 Chestnut Street,

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Philadelphia, Pennsylvania, and that the motion to amend the amended complaint to conform to the proof be considered by the Commission, without oral argument, upon said motion and brief in support thereof and in opposition thereto.

Respectfully submitted,

GEORGE W. WILLIAMS,
Trial Attorney.

Approved:

W. T. KELLEY,
Chief Counsel.

Dated:

**6. ORDER GRANTING MOTION TO AMEND AMENDED
COMPLAINT TO CONFORM TO PROOF.**

This matter coming on to be heard by the Commission upon the motion of counsel for the Commission to amend the amended complaint to conform to proof, and the Commission having duly considered said motion and the briefs filed in support of and in opposition to said motion, and the record herein, and being now fully advised in the premises;

IT IS ORDERED that the motion to amend the amended

complaint to conform to proof be, and the same hereby is, granted:

IT IS FURTHER ORDERED that the amended complaint heretofore issued be amended as follows:

1. By striking out all of the last sub-paragraph of Paragraph Three and inserting in place thereof the following sub-paragraph:

"The use of the term 'Alpacuna' by the respondent as descriptive of the fabric used in the manufacture of its overcoats and topcoats constitutes a representation by said respondent to members of the purchasing public that said fabric is composed entirely, or at least of a substantial quantity, of the fur, wool, or hair of the Alpaca and the Vicuna, and places in the hands of retailers a means and instrumentality by which such dealers are enabled to increase their own sales by representing that said overcoats and topcoats are all wool and composed entirely, or at least of a substantial quantity of the fur, wool, and hair of the Alpaca and Vicuna, thus deceiving the purchasing public."

2. By inserting a new paragraph immediately following Paragraph Four and designating the same as Paragraph Four A, in the following language:

"Paragraph Four A: In addition to the above-mentioned advertising matter, respondent attaches a permanent cloth label and a medal, the latter by a string, to each of the topcoats and overcoats, both of which pass thereon to the consuming public. In the various advertisements and swatch books and on said labels and medals appears the legend or slogan, 'There is only one Alpacuna coat.' As the topcoats are exposed to ordinary and customary examination by purchasers and are readily discovered to be composed

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entirely of wool, or wool and a hair commonly classified by a substantial portion of the trade and general public as wool, respondent represents to the purchasers thereof that the overcoats which, as above stated, bear the same name and are sold under the same trade-mark as the topcoats, are of the same composition as the topcoats, when in truth and in fact, as above set forth, the overcoats are composed of approximately one-third cotton. Also, such acts, practices and methods of the respondent supply retailers means whereby they may, and actually do, make like untrue representations to the ultimate purchasers and consuming public.

“The use of the legend or slogan in the manner above set forth had, and has, the capacity and tendency to mislead and deceive a substantial portion of the purchasers thereof, and supplies retailers with means whereby they may mislead and deceive their customers, into the erroneous and mistaken belief that the overcoats are of the same fiber content as the topcoats and are the same in all particulars, except as to weight.”

IT IS FURTHER ORDERED that an amended complaint containing the amendments herein specifically enumerated be issued and served upon the respondent;

IT IS FURTHER ORDERED that the evidence heretofore taken herein be, and the same hereby is, adopted as evidence in connection with the complaint as herein amended to the same extent and effect as if such evidence had been originally taken in connection with the complaint as herein amended.

By the Commission.

(Seal)

OTIS B. JOHNSON,
Secretary.

7. SECOND AMENDED COMPLAINT.

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Jacob Siegel Company, a corporation, hereinafter referred to as respondent, has violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

Paragraph One: Respondent, Jacob Siegel Company, is a corporation organized and doing business under the laws of the State of Pennsylvania, with its office and principal place of business at 317 North Broad Street, Philadelphia, Pennsylvania. Respondent is now, and for some time past has been, engaged in the business of manufacturing, selling and distributing men's overcoats and topcoats, among which are garments known as "Alpacuna" coats. Respondent causes said coats, when sold, to be transported from the State of Pennsylvania to the purchasers thereof located at points in various other States of the United States and in the District of Columbia. There is now, and has been during all the time herein mentioned, a course of trade by respondent in said overcoats and topcoats in commerce between and among the various States of the United States and in the District of Columbia.

Paragraph Two: In the course and conduct of its business, respondent is now, and has been during all times herein mentioned, engaged in substantial competition with various other corporations and with individuals and firms engaged in offering for sale and selling and distributing overcoats and topcoats in commerce among and between the various States of the United States and in the District of Columbia.

Paragraph Three: In the course and conduct of its business and for the purpose of inducing the purchase of its coats by retailers for resale and by members of the purchasing public for use, respondent has made use of, and now uses various types of advertising matter purporting to be descriptive of its said "Alpacuna" coats and their quality and desirability. This advertising matter consisting of swatchbooks and advertising copy for use by retailers in their own advertising of respondent's coats is caused to be transported by respondent from its place of business in Pennsylvania to its retail customers located in the various States of the United States.

The swatchbook of samples sent by respondent to its retailers contains samples of goods from which "Alpacuna" overcoats and "Alpacuna" topcoats are made, which said swatchbooks also contain the following advertising material: A simulated pictorial hemisphere above which are the words "From the four corners of the world", and from points on this run four lines on which appear pictorial representations and words as follows: (1) An Angora goat, with these words underneath: "STRENGTH from the Asiatic Angora", (2) A sheep with these words underneath: "DURABILITY from the American sheep", (3) A Guanaco with these words underneath: "SILKINESS from the Peruvian Guanaco", and (4) An Alpaca with these words underneath: "RICHNESS from the South American Alpaca."

In addition to said swatchbook of samples, the respondent furnishes advertising copy to retail dealers to be so used by said retail dealers and which was, and is, so used by respondent's retailers in their advertising in newspapers having a general circulation in the various States of the United States, and which advertising copy contained among others the following statements and representations:

"Q. What is ALPACUNA?

A. Alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guanaco and Texas Sheep.

Q. Is this an unusual combination?

A. Yes, this combination of hair and wool is the result of 9 years of scientific laboratory research work by a textile genius."

"Studying the sources of the famous Alpacuna fabric is a real geography lesson. From the South America Andes we took the warm, light, silky hairs of the Alpaca. From the valleys of Old Peru we took the fine, lustrous coat of the Guanaco. From the plains of Turkestan we took the sturdy, durable hairs of the Angora. From the Texas Panhandle we chose the thickest, warmest, and richest sheep's wool. They were all brought together, and scientifically blended into a fabric that's unmatched for richness, luxury, warmth, light, weight, long wear."

In the manner and through the means above stated, the respondent represents or implies that the material "Alpacuna" is an all-wool and hair fabric containing guanaco or vicugna or vicuna, and that it also contains the foreign fur, hair, or wool of the Angora goat from the plains of Turkestan.

In addition to the advertisements set out above, the respondent also furnishes to its retail dealers other advertising copy to be used by said retail dealers, and which was, and is, so used by respondent's retailers in their advertising in newspapers having a general circulation in the various States of the United States, in which said copy the composition of said fabric is not disclosed though the name of the fabric, to wit, "Alpacuna" is prominently featured without qualification.

The use of the term "Alpacuna" by the respondent as descriptive of the fabric used in the manufacture of its

overcoats and topcoats constitutes a representation by said respondent to members of the purchasing public that said fabric is composed entirely, or at least of a substantial quantity, of the fur, wool, or hair of the Alpaca and the Vicuna, and places in the hands of retailers a means and instrumentality by which such dealers are enabled to increase their own sales by representing that said overcoats and topcoats are all wool and composed entirely, or at least of a substantial quantity, of the fur, wool, and hair of the Alpaca and Vicuna, thus deceiving the purchasing public.

Paragraph Four: The representations made by respondent with reference to the composition or content of said alpacuna fabric are deceptive, misleading, and false. In truth and in fact the fabric "Alpacuna" is not an all-wool and hair fabric, but contains 32% by weight of cotton. The formula for the manufacture of said material as used by the Continental Mills, Inc., located at Armat and Lena Streets, Philadelphia, Pennsylvania, in the manufacture of material No. 2650, which is manufactured exclusively for the respondent and which is the fabric marketed by the respondent under the name of "Alpacuna" is as follows:

Alpaca	30.6%
Mohair	13.6%
Wool	23.6%
Cotton	32.0%

The cotton content of said fabric appears in the overcoat material only, not in the topcoat material, and is used as a backing for the wool and hair composing the remainder of the fabric. The cotton backing is concealed from the purchasing public by reason of a full lining placed in said overcoats which makes the cotton content not discernible to the purchaser. Both the topcoat fabric and the overcoat fabric known as "Alpacuna" contain no fur, hair, or

wool of the guanaco, vicugna, or vicuna. Said fabric known as "Alpacuna" furthermore does not contain the foreign fur, hair, or wool of the Angora of the plains of Turkestan, but instead said wool is obtained from domestic Angora goat of the State of Texas.

Paragraph Four A: In addition to the above mentioned advertising matter, respondent attaches a permanent cloth label and a medal, the latter by a string, to each of the topcoats and overcoats, both of which pass thereon to the consuming public. In the various advertisements and swatch books and on said labels and medals appears the legend or slogan, "There is only one Alpacuna coat". As the topcoats are exposed to ordinary and customary examination by purchasers and are readily discovered to be composed entirely of wool, or wool and a hair commonly classified by a substantial portion of the trade and general public as wool, respondent represents to the purchasers thereof that the overcoats which, as above stated, bear the same name and are sold under the same trademark, as the topcoats are of the same composition as the topcoats, when in truth and in fact, as above set forth, the overcoats are composed of approximately one-third cotton. Also, such acts, practices and methods of the respondent supply retailers means whereby they may, and actually do, make like untrue representations to the ultimate purchasers and consuming public.

The use of the legend or slogan in the manner above set forth had, and has, the capacity and tendency to mislead and deceive a substantial portion of the purchasers thereof, and supplies retailers with means whereby they may mislead and deceive their customers, into the erroneous and mistaken belief that the overcoats are of the same fiber content as the topcoats and are the same in all particulars, except as to weight.

Paragraph Five: Over a period of many years fabrics made of all-wool or wool and hair have established a

reputation as possessing superior cold-resistance qualities over fabrics made from cotton or other materials. Purchasers and prospective purchasers of topcoats and overcoats, on account of such reputation, have a decided preference for such all-wool or wool and hair fabrics over fabrics composed in part of cotton. Purchasers and prospective purchasers of topcoats and overcoats also have a decided preference for vicuña over alpaca, guanaco, angora, sheep's wool, or other similar wool, by reason of its fine quality and reputation, which preference also covers the combination of vicuña and alpaca over the combinations of wool in overcoat and topcoat fabrics.

Paragraph Six: There are among the competitors of respondent many who do not misrepresent their fabrics and overcoats.

Paragraph Seven: The acts and practices of the respondent, as above alleged, in the course of selling and offering for sale its overcoats and topcoats in commerce as described herein, have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasers thereof into the erroneous belief that said representations are true, and into the purchase of respondent's overcoats and topcoats because of the erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade has been diverted unfairly to the respondent from those of its competitors referred to in Paragraph Six hereof who do not misrepresent their overcoats and topcoats. In consequence thereof, injury has been, and is being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

Paragraph Eight: The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and consti-

tute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, the Premises Considered, the Federal Trade Commission on this 16th day of May, A. D., 1940, issues its amended complaint against said respondent.

NOTICE

Notice is hereby given you, Jacob Siegel Company, a corporation, respondent herein, that the 21st day of June, A. D., 1940, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the amended complaint. —

You are notified and required, on or before the twentieth day after service upon you of this amended complaint, to file with the Commission an answer to the amended complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the amended complaint, file with the Commission an answer to the amended complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the amended complaint, unless respon-

dent is without knowledge, in which case respondent shall so state.

.

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the amended complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the amended complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the amended complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said amended complaint and to have authorized the Commission without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the amended complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the amended complaint.

In Witness Whereof, the Federal Trade Commission has caused this, its amended complaint, to be signed by its Secretary, and its official seal to be hereto affixed at Washington, D. C., this 16th day of May, A. D., 1940.

By the Commission.

(Seal)

OTIS B. JOHNSON,
Secretary.

8. ANSWER TO SECOND AMENDED COMPLAINT.

The Respondent, Jacob Siegel Company, a corporation, answering the (Second) Amended Complaint of the Federal Trade Commission herein alleges and respectfully shows:

1. Respondent makes the same answer to the (Second) Amended Complaint that it has heretofore made (in its Answer to the First Amended Complaint, which is made a part hereof) save as follows:

(a) Paragraph 3, sub-paragraph 4. An examination by Respondent of its files and advertising copy does not reveal any advertisements using the word "vicuna", and if there were any such advertisements, if same is material, Respondent demands proof thereof.

(b) Paragraph 3, sub-paragraph 6, as changed, is denied. Respondent avers that Alpacuna is a coined word and purely a trade name duly registered under the Federal Trade Mark Law, and that it is not descriptive of the fabric, and does not constitute a representation that said fabric is composed wholly or partly of the fur, wool or hair of the alpaca and/or vicuna. Respondent further alleges that it can properly use the name "alpacuna" in connection with its product. Since the name does not contain any representation as alleged, and is properly employed, it does not place in the hands of retailers any means of increasing their sales by representations, as alleged, and there is no deception of the purchasing public.

(c) Paragraph 4 A is denied. Respondent admits that many labels and medals bear the slogan alleged and avers that the same is proper and merely denotes the "line" of goods and the manufacturer. The topcoats are not lined because lightness is desired, and the overcoats are in order to give a luxurious finish and in accordance

with the general custom of the trade. The cotton back on the overcoat is employed for warmth and durability. There is no representation that the overcoats and topcoats are the same, and the public naturally expects that they are different, either in the weight of their fibers or in their make-up. There is thus no representation from the topcoats that the overcoats are all wool or substantially so. Accordingly, no means are furnished retailers by which they may misrepresent the overcoats to the public, nor do they so misrepresent said overcoats. The slogan adopted has no capacity or tendency to deceive or mislead the public or any part thereof, or to supply retailers with a means for deceiving or misleading the public as alleged.

Wherefore, it is respectfully prayed that the Complaint be dismissed.

In Witness Whereof, the Respondent, Jacob Siegel Company, has caused this Answer to (Second) Amended Complaint to be signed by its duly authorized officer at Philadelphia, Pennsylvania, this _____ day of _____, 1940.

JACOB SIEGEL COMPANY

By

President.

Signed:

.....
.....

Attorneys for Respondent.

STATE OF
COUNTY OF

} ss:

_____, being duly sworn, according to law, deposes and says that he is _____ of Jacob Siegel Company, Respondent herein, and authorized to take this affidavit on its behalf and now so does; that the facts set

forth in the within Answer to (Second) Amended Complaint to the best of his knowledge, information and belief are true and he expects to be able to prove them upon a hearing in this matter.

Sworn to, and subscribed before me this _____ day of _____, A. D. 1940.

.....
Notary Public



9. THE EVIDENCE (Continued).

Testimony for Respondent Below.

EDWARD G. TAULANE, JR., was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Will you please state your name for the record?

A. Edward G. Taulane, Jr.

Q. Where do you live?

A. Gladwyne, Pennsylvania.

Q. You are a member of the Philadelphia Bar?

A. Yes, sir.

Q. You have been for how long?

A. Seven years.

Q. And you are associated with what firm?

A. Montgomery and McCracken.

Q. Mr. Taulane, at my request did you make an examination of and obtain photostatic copies of certain pages from certain technical and general Dictionaries, and encyclopedias, relative to the word "vicuna"?

A. Yes, sir, I did.

Q. Will you tell the Examiner just what volumes you examined?

A. I went last spring to the New York Public Library and I examined their Standard Dictionaries: principally, I examined Funk and Wagnalls', the latest edition, in 1939; Webster's New International Dictionary, the latest edition, 1939; the Encyclopedia Britannica, 14th edition, 1929, which is also the latest edition; the New English Dictionary which we know as the Oxford English Dictionary, the 1916 edition, which is the latest edition they had on their shelves there. I also examined the Standard Dictionary, 20th Century Edition, which was published in 1904.

In the technical books I examined E. Midgley Technical Terms in the Textile Trade published in 1931-1932; Fabric, by Grace G. Denny, 4th Revised Edition, 1936; and I had one other here, sir, Louis Harmanth, Dictionary of Textiles, 2nd Edition, 1920.

Q. Did you have made photostatic copies of the pages of all of these works to which you have just referred upon which the word "vicuna" appears as a definition?

A. Yes, sir, I had them made by the Photo Print Department of the Library and then I checked them afterward to see that they were correct.

Q. Have you those photostats with you?

A. I have, sir.

MR. McCracken: Would you care to see them, Judge Williams?

MR. WILLIAMS: I might just glance over them.

MR. McCracken: I am going to ask the witness to read briefly into the record from each of those definitions.

Your Honor, I would like to have these photostats marked for purposes of identification.

TRIAL EXAMINER REARDON: Have you any particular order in which you would like to put them?

MR. McCracken: I will ask that this photostatic copy of a page which appears in Funk and Wagnalls' New Standard Dictionary, 1939, be identified as Respondent's Exhibit 28.

TRIAL EXAMINER REARDON: The photostat will be marked Respondent's Exhibit 28 for identification.

(The photostat referred to was marked "Respondent's Exhibit 28" for identification.)

MR. McCracken: I will ask that this photostat taken of a page in Webster's New International Dictionary, 2nd Edition, 1939, be identified as Respondent's Exhibit 29.

TRIAL EXAMINER REARDON: The photostat will be marked Respondent's Exhibit 29 for identification.

(The photostat referred to was marked "Respondent's Exhibit 29" for identification.)

MR. McCracken: I will ask that this photostat of a page in the Encyclopedia Britannica, 14th Edition, 1929, be marked Respondent's Exhibit 30, for purposes of identification.

TRIAL EXAMINER REARDON: It may be so marked.

(The photostat referred to was marked "Respondent's Exhibit 30" for identification.)

MR. McCracken: I would like to have marked for identification this photostat of a page from the New English Dictionary by J. A. H. Murray, the Oxford English Dictionary, as of October, 1916.

TRIAL EXAMINER REARDON: The photostat will be marked Respondent's Exhibit 31 for identification.

(The photostat referred to was marked "Respondent's Exhibit 31" for identification.)

MR. McCracken: I will ask that this photostatic copy of a page in the Standard Dictionary, 20th Century Edition, 1904, be marked Respondent's Exhibit 32 for identification.

TRIAL EXAMINER REARDON: The instrument may be so marked.

(The photo-stat referred to was marked "Respondent's Exhibit 32" for identification.)

MR. McCracken: I will ask that this photostatic copy of a page in the Dictionary of Textiles, 2nd Edition, 1920, Louis Harmanth, be marked Respondent's Exhibit 33 for identification.

TRIAL EXAMINER REARDON: It may be so marked.

(The photostat referred to was marked "Respondent's Exhibit 33" for identification.)

MR. McCracken: I will ask that these photostats of two pages in E. Midgley Technical terms in the Textile Trade, 1931-1932, be marked Respondent's Exhibits 34-A and 34-B for identification.

TRIAL EXAMINER REARDON: The photostats may be so marked.

(The photostats referred to were marked "Respondent's Exhibits 34-A and 34-B" for identification.)

MR. McCracken: I will ask that this photostat of pages from "Fabric, Grace G. Denny, 4th Revised Edition, 1936, be marked Respondent's Exhibit 35 for identification.

TRIAL EXAMINER REARDON: The photostat may be so marked.

(The photostat referred to was marked "Respondent's Exhibit 35" for identification.)

MR. McCracken: I offer Respondent's exhibits 28, 29, 30, 31, 32, 33, 34-A and B, and 35 for identification, in evidence as photostatic copies of the original works.

MR. WILLIAMS: I object to the admission not on the ground they are copies or anything of that sort, but because in the first place I understand there is an abundance of evidence offered to show that a great many people will be misled by the use of this name; consequently, any proof put in of a negative character or of a nature which would misinform somebody if he went to consult certain authorities that may have some variations, ought not to make this type of evidence admissible.

Secondly, the mere fact these books or authorities have picked up misleading definitions, or, at least, picked up some material which has been prepared without containing veruna in it, and therefore would create a misleading situation in the minds of the public, ought not to make this admissible.

TRIAL EXAMINER REARDON: I understand these Dictionary definitions have to do with the word "veruna."

MR. McCracken: That is right, sir.

TRIAL EXAMINER REARDON: Then the Commission has already introduced evidence of a similar character, books, or papers, and I will let the Commission pass on it. I will overrule the objection.

MR. WILLIAMS: Exception.

TRIAL EXAMINER REARDON: Exception noted.

Respondent's exhibits 28, 29, 30, 31, 32, 33, 34 A and B, and 35 for identification which were offered, objection to their receipt being overruled, are to be marked in evidence as Respondent's exhibits 28 to 35 inclusive.

(The photostats referred to, heretofore marked for identification "Respondent's Exhibits 28, 29, 30, 31, 32, 33, 34-A, 34-B, and 35" were received in evidence.)

By MR. McCracken:

Q. Mr. Taulane, take Respondent's Exhibits 28 to 35 inclusive, in order, and you will find them in order on the reverse side. Will you be kind enough to read briefly the definition of the word "vicuna" as it appears on each of these photostats.

A. I am reading from Respondent's Exhibit 28.

Q. Which is what volume?

A. Which is Funk and Wagnalls' New Standard Dictionary, 1939: "Vicugna, vicuna, A small cameloid mammal of the high Northern Andes, having fine and very valuable wool; vicugna-cloth, soft cloth made of vicugna-wool; vicugna wool, 1. A mixture of wool and cotton; used for soft fabrics. 2. The wool of the vicugna."

I will omit notes as to pronunciation, et cetera.

Q. Yes. The next is what?

A. Respondent's Exhibit 29, Webster's New International Dictionary, 1939: "Vicuna, 1. a wild ruminant of

the Andes from Ecuador to Bolivia allied to the domesticated llama and alpaca. Its color is light brown, paler on the under parts and with light markings on legs and head. It is smaller than the guanaco, but, like it, lives in herds and is fleet-footed. It has been much hunted for its wool and fur and is becoming scarce.

"2. Short for vicuña cloth, a very soft woollen fabric, usually twilled and napped, made from the wool of the vicuña, or an imitation of it made from fine merino wool."

Q. Go ahead.

A. I am now reading from the Encyclopedia Britannica, 1929, Respondent's Exhibit 30.

MR. WILLIAMS: Before you leave that second one, Respondent's Exhibit 29, I think you ought to mention for the sake of the record that there is a picture of the animal there.

MR. McCracken: You can do that on cross-examination.

MR. WILLIAMS: Excuse me. All right.

By MR. McCracken:

Q. Please continue with Respondent's Exhibit 30.

A. (Reading) "Vicuña, a term applied both to a distinctive variety of wool, and also to a special kind of 'finish' given to certain varieties of woollen textures. Vicuña wool is the fleece obtained from the Vicuña, a wild relative of the llama inhabiting the mountainous districts of Chili and Peru. This type of wool is distinguished for its remarkably long, fine soft and lustrous character for which it is greatly prized. These properties adapt it eminently for the production of woollen and worsted textures that require a soft and full 'handle' or 'feel', and also for the development of a 'nap'."

"Vicuña fabrics comprise several varieties of woollen

and worsted textures, which are of the characters of serge, excepting that they are more supple, softer and fuller, and of more subdued lustre than true serge textures. This is partly owing to the different character of wool employed in their manufacture, as well as to the method of finishing. Like serges, also, vicuna fabrics are usually based on the simple twill weave structures and employed as dress and costume materials and suitings.

“Vicuna fabrics comprise two distinct types of textures, viz.: (1) simple structures for the lighter and medium textures suitable for women’s wear, and light suitings and coatings for men’s summer wear; and (2), double cloth structures for the heavier and stronger textures suitable for men’s overcoatings. This class is produced either from two-fold worsted both for warp and weft, or from two-fold worsted warp, and single worsted or woolen weft, for softer textures. One example of the latter class is woven with the 5-end venetian (double-stitch 5-end warp satin) weave, and a ten-end sateen (weft-face) back; while a second example is woven with the four-end (2—2) twill face weave, and with the plain weave on the back, which produces a relatively stronger and better wearing cloth.

“To obtain the true ‘vicuna’ handle, the routine of the finishing process is varied to suit the character of yarn employed, the weave structure and the ‘setting’ of the fabric, i. e., the number of warp and weft threads per inch in the fabric. The procedure then consists of knotting and mending; crabbing or blowing with steam, to set the fabric; scouring; milling; dyeing; washing-off; tendering; raising (wet); cutting; brushing; steaming or dewing; shrinking and pressing (rotary machine). An alternative method is to raise the cloth previous to milling”.

Then follows a definition of Vicuna which refers to the animal.

Q. Go ahead, Mr. Taulane.

A. Respondent’s Exhibit 31, which is from the New English Dictionary, 1916.

TRIAL EXAMINEE REARDON: That is the Oxford English Dictionary?

THE WITNESS: Yes, sir.

“Vicuna: 1. A South American animal closely related to the Llama and alpaca, inhabiting the higher portions of the northern Andes and yielding a fine silky wool used for textile fabrics.

2. Vicuna cloth; also, a garment made of this.

3. Vicuna-cloth, cloth made of vicuna-wool; vicuna-wool, (a) wool or fur of the vicuna; (b) a mixture of fine wool and cotton.”

By MR. McCracken:

Q. What is the next one?

A. Respondent's Exhibit 32 which is the Standard Dictionary, 20th Century Edition, 1904:

“Vicugna, Vienna: a small cameloid mammal of the high northern Andes having fine and very valuable wool.

“Vicugna-cloth, Soft cloth made of vicugna-wool-vicugna-wool.

1. A mixture of wool and cotton; used for soft fabrics.

2. The wool of the vicugna.”

Q. Proceed to the next exhibit.

A. The next is Respondent's Exhibit 33 which is Louis Harnauth, Dictionary of Textiles, 1920:

“Vicuna-1. very long, soft brownish hair yielded by the South American vicuna goat;

2, trade name for yarn composed of coarse wool and cotton or all-cotton finished in imitation of woolen yarn;

3, a very fine twilled dress fabric, finished with a soft nap, originally made of genuine vicuna wool;

4, imitation of the above, made of soft wool, often mixed with cotton, slightly fullered and napped; used for men's suits and overcoats. See also vigogne yarn."

Q. Proceed to the next exhibit.

A. The next is Respondent's Exhibit 34-A and B, which is E. Midgley's Technical Terms in the Textile Trade:

"Vicuna.—Originally made from Vicuna hair which provided the resultant texture with a handle characteristic of the raw material employed. The limited supply of this material has been responsible for this type of cloth being successfully imitated in wool materials. The wool fabrics are so treated during dyeing and finishing, particularly in the milling and raising processes, to cover the thready appearance of the cloth with a dense, erect pile of fibres. This particular appearance in wool cloths is known as the Vienna finish."

Examples of Vicuna cloths produced from wool are then given with the formula and manner in which they are made up.

Q. What is the next one?

A. Respondent's Exhibit 35 which is Grace G. Denby's Fabrics, 4th Revised Edition, 1936:

"Vicuna. Wool from a small goatlike animal in South America. Very rare. Sometimes this name is given to a soft wool fabric."

Q. Now, Mr. Taulane, I hand you this book; namely, Webster's Collegiate Dictionary, 1936. Will you be kind enough to read into the record the definition of the word vicuna from this book.

TRIAL EXAMINER REARDON: What is the volume you have.

By MR. McCracken:

Q. You are reading from what, Mr. Taulane?

A. I am reading from Webster's Collegiate Dictionary, Fifth Edition, 1936:

"Vicuna: 1. A wild ruminant of the Andes from Ecuador to Bolivia, allied to the domesticated llama and alpaca; 2. Short for Vicuna cloth, a very soft woolen fabric, made from the wool of the vicuna, or an imitation of it."

Q. Mr. Taulane, have you with you two opinions of the Commissioner of Patents which I desire to read into the record?

A. Yes, sir.

MR. McCracken: Your Honor, I will ask that this document consisting of two pages be marked Respondent's Exhibits 36-A and 36-B for identification.

TRIAL EXAMINER REARDON: The document may be so marked.

(The document referred to was marked "Respondent's Exhibits 36-A and 36-B" for identification.)

MR. McCracken: If your Honor please, I would like to have this document marked Respondent's Exhibit 37 for identification.

TRIAL EXAMINER REARDON: It may be so marked.

(The document referred to was marked "Respondent's Exhibit 37" for identification.)

MR. McCracken: Take a look at those, first, Judge Williams, please.

Mr. Examiner, I am going to refer the Commission to two opinions of the Commissioner of Patents:

The first, Respondent's Exhibits 36-A and 36B for identification, entitled, "New York Knitting Mills, Incorporated, versus Gotham Knitting Mills, Incorporated, decided April 28, 1938, and reported in the United States Patent Quarterly, Volume 37, at page 459; the second, Respondent's Exhibit 37 for identification, entitled "New York Knitting Mills, Incorporated, versus Rosanna Knitted Sportswear, reported in the United States Patent Quarterly, volume 37, page 460."

Do you wish to object to them, Judge Williams?

MR. WILLIAMS: I object to Respondent's exhibits 36-A and B, and 37 for identification, first, because we have no opportunity to cross-examine this person; secondly, it is not binding on the Commission; thirdly, I do not see anything in here to indicate the type of material used there, and it might be that if those materials were actually vicuna I suppose he might base his decision on that; however, I do not know if he did. I still do not think it would be a sound trade mark and we would have to pass on it as we are doing is the equivalent, in this case.

For those reasons at least, I think they ought not be admitted.

MR. McCracken: Mr. Examiner, it is my understanding that the rules and opinions of the Commission of Patents like those of the Federal Trade Commission, the Income Tax Division, the United States Board of Tax Appeals, and others are referable, besides the opinion, and opinion evidende upon the questions involved. Now, I offer these for the reasons I will show you, sir, in a moment.

TRIAL EXAMINER REARDON: I suppose they refer to the word vicuna.

MR. McCracken: Not Vienna, no, sir; I will show you what it is in a moment; it refers to the suffix "enna" is the trade name.

TRIAL EXAMINER REARDON: Before you put it on the record I ought to make up my mind about it.

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

I will overrule the objection to the admission of Respondent's Exhibits 36-A, 36-B, and 37, for identification in evidence, for the Commission to take whatever weight or value there is in them. We know what the law is regarding statements by the Bureau of Standards. While the Bureau of Standards may not decide what is unfair competition, this would have a bearing on what the public might understand, and the public's understanding of its being a public document with the same standing as Dictionaries would have.

MR. WILLIAMS: I also want to object to them on the additional ground that as a matter of fact there is quite a mass of evidence already offered showing confusion and showing that the people are misled, and this is in the nature of negative proof which I do not think should be received; in other words, it savors of the old story of three men seeing a murder committed and opposing counsel producing twelve men who did not see it.

TRIAL EXAMINER REARDON: I will overrule the objection.

MR. WILLIAMS: Will you allow me to give some additional reasons which I have here.

TRIAL EXAMINER REARDON: Do you not think perhaps you can give them in your brief?

MR. WILLIAMS: No, sir, because I would like you to have the benefit of them now in order that you might see the point of my objection.

In a very recent case of Fashion Originator's Guild of America versus Federal Trade Commission, C. C. A. 2nd Circuit, D.2769, decided July 22, 1940, the same general principal was involved in one portion of that and I would like to read this to you.

TRIAL EXAMINER REARDON: Are you going to read all this?

MR. WILLIAMS: Just this part here, a memorandum. It seems that in that case they had shown the set-up of the organization which was clearly monopolistic in the view of the Court. The Examiner ruled out all testimony after that was shown, and there was quite a good deal of furor about it and the Commission sustained the Examiner. It went to the Court of Appeals and amongst other things the Court said:

"For these reasons, the combination was unlawful per se."

In other words, it showed it was monopolistic.

"The Commission was right in refusing to hear any evidence in its excuse, for it could have no excuse; the case is the same as Milliner Creator's Guild versus FTC, supra (109 Fed. 175). Similarly, the conduct of the Examiner in shutting off cross-examination and the like—of which the Guild urgently claims—was proper; the case stood admitted, no defense was possible; indeed, so far as the Guild had any complaint whatever, it is that the hearings against it were drawn out most unnecessarily."

Another case, the General Motors case, tried in the United States District Court in the Northern Dis-

trict of Indiana, Criminal Docket No. 1039, involved practically the same question which we have here, and I have here the quotation that I propose to use, from the Court, together with the questions and answers leading up to that ruling.

The actual statement of the Court in disposing of that matter was, where there was an attempt to prove negative opinions, as follows:

"I have thought a good deal about this case. I could foresee from the beginning that probably that sort of testimony would be offered. I thought about it and have read some about it, and while I can see the persuasive character of the offer, I feel convinced in my own mind after mature consideration that this evidence is not proper. I may be wrong. At any rate, that is going to be my ruling, so the objection will be sustained and an exception will be allowed."

See transcript of record in Department of Justice, page 3107 et seq.

In other words, after a situation has been shown which is unlawful then any evidence of that type would not be admissible.

If your Honor please, in order to have the whole thing in the record I will be glad to put in the questions and answers.

TRIAL EXAMINER REARDON: The Respondent's counsel can get that material, I suppose.

MR. WILLIAMS: They will have difficulty in getting it unless they get the record.

MR. McCracken: We can look at it after the hearing, Judge Williams.

MR. WILLIAMS: Therefore, it seems to me there has been an abundance of evidence already offered showing or tending to show that there would be con-

fusion in the minds of many people; in other words, a substantial portion of the public would be misled by the use of this compound or coined word, as they call it, and that being once shown all the other evidence of a negative character, that somebody else would not question it, or that somebody else who had chosen to make a careful search would understand that there are several things which would enter into the situation so that they would think they would never be deceived by the use of the word vicuna, would be erroneously permitted in my judgment. For this reason, as I say, I object to this matter, and of course I would like you to take what I am saying now in conjunction with the other material.

TRIAL EXAMINER REARDON: I will overrule the objection.

MR. WILLIAMS: Exception.

TRIAL EXAMINER REARDON: I will give you an exception.

The objection having been overruled, Respondent's Exhibits 36-A, 36-B, and 37 for identification may be received and marked in evidence as Respondent's Exhibits 36-A, 36-B, and 37.

(The document referred to, heretofore marked for identification "Respondent's Exhibits 36-A and 36-B" was received in evidence.)

(The document referred to, heretofore marked for identification "Respondent's Exhibit 37" was received in evidence.)

MR. McCracken: I will read this one sentence from Respondent's Exhibit 36-A, which is a matter of opinion dealing with the term "Goth-Cuna" which was asserted to be deceptively similar to "Ros-Cuna". The assistant Commissioner says:

"I think that distinction is equally applicable here. Both "Valcuna" and "Goth-Cuna" are purely arbitrary and meaningless expressions, and are hence more likely to be confused than would be words in common use."

Reading from Respondent's Exhibit 37 in which the word Ros-Cuna was held to be deceptively similar to Valcuna, the Commissioner said:

"Applicant suggests that 'Valcuna' is derived from the word 'vienna', which is the name of 'a small mammal of the Northern Andes having fine and valuable wool', and is also defined as a soft cloth made from such wool. That may be true, but even 'vienna' is not a word in common use, and 'cuna' alone has no English meaning except as indicating a member of an obscure Indian tribe."

MR. McCracken: Your Honor, I would like to have this typewritten list, consisting of three pages, marked for identification as Respondent's Exhibit 38-A, B, and C.

TRIAL EXAMINER REARDON: The document may be so marked.

(The document referred to was marked "Respondent's Exhibit 38-A, 38-B and 38-C" for identification.)

By Mr. McCracken:

Q. Mr. Taulane, have you at my request compiled a list of names of cloths or other trade names as applied to textiles, either beginning or ending with the word "Cuna"? I show you Respondent's Exhibit 38-A, B, and C for identification.

A. Yes, sir, I have.

Q. Is that list of names, Respondent's Exhibit 38-A, B, and C, for identification, supported by advertisements in each case which you have in your hand?

A. Yes, sir.

MR. McCracken: I now offer in evidence, sir, as Respondent's Exhibits 38-A, B, and C, a list of names produced by the witness, supported by advertising matter in his hands, all of which either begin or end with the four letters C-u-n-a. The purpose of the offer is, following the opinion on the Commissioner of Patents, to indicate that such words are all coined words purely, used as trade names and meaningless.

MR. WILLIAMS: I object to their admission for the same reason I stated before and specifically because in fact that numerous names are used erroneously would not justify the erroneous use of the same type of name here. We cannot very well as a matter of convenience proceed against all types of violators at one time. There has to be a beginning and this perhaps is the beginning case in this respect.

As I say, the mere fact that numerous misuses exist on the parts of these words, and alpaca and vienna, would have no effect in this case.

TRIAL EXAMINER REARDON: My ruling will not necessarily indicate one way or the other what I believe in regard to the admission of the exhibits, but I think the Commission should have them before it in connection with the Dictionary definitions and the other opinions of the Patent Commissioner to pass on their value and weight.

MR. McCracken: The objection is then overruled, sir?

TRIAL EXAMINER REARDON: Yes, the objection is overruled.

MR. WILLIAMS: Exception.

TRIAL EXAMINER REARDON: Exception noted.

Respondent's Exhibits for identification 38-A, B.

and C, will now be received and marked in evidence as Respondent's Exhibits 38-A, B, and C.

(The document referred to, heretofore marked for identification "Respondent's Exhibit 38-A, 38-B, and 38-C" was received in evidence.)

By MR. McCRACKEN:

Q. Mr. Taulane, will you just run down that list quickly and read those names which are contained in Respondent's Exhibits 38-A, B, and C.

A. The names are as follows:

"Lamacuna, Kalcuna, Kunapac, Ancuna, Lancuna, Kerkuna, Andekuna, Macuna, Velvacuna, Alpacunit, Valcuna, Goracuna, Roceuna, Maicuna, Valcuna, stated as two words; Kalikuna, Pur Cuna, Lacuna, Camel Cuna, Montacuna, Wulcuna, Balcunas, Air Cuna, King Cuna, Metecuna, Alpecuna with an "e"; 'Cuna, with an apostrophe before it; Alpacuna-Algoria, Anacuna, Vancuna, Aristocuna, Montacuna, Goth Cuna, Dura-Cuna, Cama Cuna, Gileuna, Apacuna; Lluxtra-Cuna, with two "ll's", Coleuna, Cunegora, Winocuna, Llamacuna with two "ll's"; as distinguished from the former with one "l"; Amacuna, Vicune, Cunapac, Glo-Cuna, Dura Cuna, Cuna-Pac's, Granitecuna, Ren Cuna, Cuna Lamb, Velva Cuna, as two words; Tycuna Vee, Rakuna, Kuna, Ros-Cuna, Goth Cuna, Cuna Pac, as two words; Arcuna, Town Cuna, Cuna Hair-Cloth O-Coats, Dacuna, All Wool Cuna, Modcuna, Kara-Cuna, Alpacunas, Alpaguna, Camaquna, Paulecuna, Starecuna, Alecuna, Acuna, Cunapiac.

Q. I think you said the numbers on the right side of the words on the list which is now in evidence as Respondent's Exhibit 38-A, B, and C, are the numbers of the respective advertisements, the forty-six names you just read.

TRIAL EXAMINER REARDON: Opposite the names?

MR. McCracken: Yes.

By MR. McCracken:

Q. Mr. Taulane, I understand you to say that every one of these names is supported by an advertisement in your hands and showing it is in common use in the trade.

A. That is correct.

Q. And in addition to that have you in your hands a list of trade-marked names and the trade marks of the names beginning with "Cuna" or ending in "Cuna"?

A. Yes, I have.

MR. McCracken: Let me have them, please.

Your Honor, I would like to have this marked as Respondent's Exhibit 39, for identification.

TRIAL EXAMINER REARDON: The list may be so marked.

(The document referred to was marked "Respondent's Exhibit 39" for identification.)

MR. WILLIAMS: I will object to that for the same reasons, of course.

MR. McCracken: Before I identify it I am going to offer in evidence the various trade marks which the witness has before him. I now produce the trade marks from the United States Patent Office. There is no objection to the offer as an actual printed record of the patent office, is there, Judge Williams?

MR. WILLIAMS: No. My objection is on the former grounds.

MR. McCracken: I am going to offer these, sir. I will have them marked for identification.

THE WITNESS: They have already been marked as Respondent's Exhibits 1, to 23, inclusive for ident-

ification. This list supplements the other list. I have not added them to the list.

BY MR. McCracken:

Q. In other words, Mr. Taulane, let me understand you; of these trade marks which I now have, and which have been marked Respondent's Exhibits 1 to 23 for identification a number are in the list which you have already read.

A. That is correct, sir.

Q. And in addition, some of them are in the list which you are now about to read.

A. That is right. Where I did not have any advertising and I found a trade mark name I included those in this list; in other words, they supplement the other list and make it complete.

MR. WILLIAMS: Are these real exhibits, now?

MR. McCracken: They have been marked for identification, and I am now offering, sir, Respondent's Exhibits 1 to 23 inclusive in evidence.

TRIAL EXAMINER REARDON: They have already been marked in this case?

MR. McCracken: Marked in this case, sir, for identification; all of them are registered trade marks of names beginning or ending with "Cuma"; many of them are in the list already read, and some of them are in a list which I will now ask Mr. Taulane to read.

MR. WILLIAMS: Of course, I will object for the reasons I have heretofore given in the other connection.

TRIAL EXAMINER REARDON: Are you going to read from a list?

MR. McCracken: That list which has been marked for identification—

THE WITNESS: As Respondent's Exhibit 39.

MR. WILLIAMS: Where does this stand now?

MR. McCracken: I am offering in evidence now the trade marks.

MR. WILLIAMS: As I say, I am objecting on the grounds heretofore stated.

MR. McCracken: Respondent's Exhibit 39 for identification is the list of ten or twelve of these trade marks. He can read direct from the trade marks if he wants.

I am offering twenty-three trade marks.

TRIAL EXAMINER REARDON: You are offering the twenty-three first?

MR. McCracken: Yes, sir.

TRIAL EXAMINER REARDON: And you note your objection?

MR. WILLIAMS: For reasons heretofore stated in connection with the other rulings of the Commission.

TRIAL EXAMINER REARDON: To be consistent with what I have previously ruled for the same reasons I overrule the objection and give you an exception; Respondent's exhibits 1 to 23 inclusive for identification may be received and marked in evidence as Respondent's exhibits 1 to 23.

(The documents referred to, heretofore marked for identification "Respondent's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23", were received in evidence.)

By MR. McCracken:

Q. Will you be kind enough to tell the Examiner what you are now about to read.

A. I am now about to read Respondent's Exhibit 39

for identification. This is a supplementary list of "Cuna" trade names. This list is supported by trade mark registrations.

Q. Which are among the Respondent's Exhibits 1 to 23 inclusive?

A. Which are among the Respondent's Exhibits 1 to 23. They are not supported by advertising as the first list was.

TRIAL EXAMINER REARDON: Respondent's Exhibits 1 to 23 were supported by advertisements, you say?

THE WITNESS: That is correct.

MR. McCracken: If your Honor please, I wish at this time to offer in evidence Respondent's Exhibit 39 for identification.

MR. WILLIAMS: I am objecting to this on the same general grounds.

TRIAL EXAMINER REARDON: I make the same general ruling and give you an exception.

Respondent's Exhibit 39 for identification may be received and marked in evidence as Respondent's Exhibit 39.

(The document referred to, heretofore marked for identification "Respondent's Exhibit 39" was received in evidence.)

By MR. McCracken:

Q. When you say they are not supported by advertising do you mean they have never been advertised or you do not have advertisements of these in this room?

A. I do not have any in this room. I imagine they have used them, they have used the trade marks and advertised them.

Q. Please read the names on Respondent's Exhibit

A. They are, Percuna, Super Cuna, Co-Cuna, Delcuna, Bâr Cuna, Bry Cuna, which is two words, Cunalam, Hieuna, Ren Cuna, which is two words, Ra-Kuna, Cuna Tex, Bon-A-Cuna, Anglo Cuna.

Q. Mr. Taulane, you have the advertisements there, have you not?

A. Yes.

MR. McCracken: Without offering the advertisements which are somewhat bulky I have asked the witness to produce them in order that they may be available for cross-examination if Judge Williams cares to use them for cross-examination.

TRIAL EXAMINER REARDON: Mr. McCracken, will you turn those over to him, Mr. Taulane.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By MR. WILLIAMS:

Q. Referring to the photostats, copies of the various books, I notice that the page taken from the Encyclopedia Britannica, Respondent's Exhibit 30, and one taken from Webster's New International Dictionary, Respondent's Exhibit 29, and I also notice that the page of the Webster's Collegiate Dictionary contains quite sizable pictorial representations of the Vicuna?

A. That is true, sir.

Q. They are very noticeable and very distinct?

A. That is true.

Q. I did not notice pictorial representations on the various other of those photostatic copies. Were there any pictorial representations in reference to that test anywhere in the book?

A. I do not think so, sir, no.

Q. You did not search for that?

A. I did not, frankly, no.

Q. If my recollection serves me correctly the Respondent Company was the first one to use this compound name to cover this type of cloth?

A. That I do not know, sir.

Q. I thought they did say that?

A. I do not know what the evidence here shows.

TRIAL EXAMINER REARDON: Do you mean with reference to the use of the particular name Alpacuna; is that what you mean?

MR. WILLIAMS: No, sir; but the "Cuna" in connection with this type of cloth.

TRIAL EXAMINER REARDON: Do you mean the first to coin the word having "Cuna" as a part of it?

MR. WILLIAMS: Yes, in relation to textiles of this type.

TRIAL EXAMINER REARDON: I do not know whether or not the record shows the date when they first used that name.

MR. McCracken: May I interrupt. That cannot be so because the record shows the date when Mr. Siegel began to use this name was not until 1930 or 1931. Here is a registered trade mark Ra-Kuna, in 1927. I think the others are all later than 1931. Many are registered in 1937.

MR. WILLIAMS: I am under the impression subject to correction for the record they went back in that period, too.

I am not talking about registration. I am talking about the use of the word as for your material.

MR. McCracken: The record shows it was 1930 or 1931.

MR. WILLIAMS: That shows when it was registered. I am not talking about registration, but about the actual use.

TRIAL EXAMINER REARDON: The witness cannot answer that.

By MR. WILLIAMS:

Q. Well, then, you say you have no recollection of that testimony along those lines?

A. I do not believe it is so, but I do not know for a fact.

Q. You have given a long list of names involving "Cuna". How are those words syllabled there, where it is possible to distinguish the method of syllabing?

A. I do not understand the question.

Q. What constitutes the syllables of those various words so far as you can gather from their arrangement or any arrangements there?

A. I do not quite understand what you mean. 2

Q. In other words, the syllable "Cuna" is a syllable—

TRIAL EXAMINER REARDON: Are they one-syllable words or two or three syllable words? If they are more than one syllable words what are the syllables?

THE WITNESS: I suppose the syllables in llama-cuna would be lla-ma-cu-na.

By MR. WILLIAMS:

Q. Cuna is one syllable.

A. I do not think so.

MR. McCracken: I think it is two.

By MR. WILLIAMS:

Q. Where it is used it is segregated from the other part of the word?

A. No, sir. Most of those words are just one.

Q. Where there is a division the "Cuna" is divided from the balance of the word?

A. I imagine that is so, generally speaking.

MR. WILLIAMS: I think that is all.

MR. McCracken: I have no more questions for Mr. Taulané.

* * * * (N. T. p. 724.)

ALBERT M. BERG was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Please state your name for the record.

A. Albert M. Berg.

Q. Where do you live, Mr. Berg?

A. 1150 Brighton Beach Avenue, Brooklyn, New York.

Q. What is your business, Mr. Berg?

A. I am associated with Arnold Constable and Company in the capacity of vice-president and merchandise manager, one of my departments being men's clothing.

Q. Arnold Constable and Company are located in New York City?

A. In New York City, 453 Fifth Avenue.

Q. How long have you been in this business?

A. With Arnold Constable and Company for fifteen years; prior to that, for six years with Martin's of Fulton Street, making a total of twenty-one years.

Q. In the clothing business?

A. Yes, sir.

Q. Your particular department has to do with men's clothing?

A. One of my departments has to do with that.

Q. Does that include overcoats?

A. Yes, sir.

Q. Does Arnold Constable and Company sell the Alpacuna overcoat?

A. Yes, sir, we do.

Q. Mr. Berg, do you know the contents of the Alpacuna overcoat; are you familiar with the garment?

A. I am quite familiar with the garment.

Q. There are two garments here in controversy, the overcoat and the topcoat; are you familiar with both?

A. Yes, sir, generally speaking I am.

Q. Will you please describe them briefly?

A. As I recognize it, the overcoat contains alpaca, mohair, wool, and has a cotton back; the top coat contains alpaca, mohair and wool.

Q. With no cotton back?

A. With no cotton back.

Q. Is it a widely selling garment?

A. In our case it is our best selling overcoat.

Q. How long have you been selling it?

A. We were the first to introduce it in the market, I believe.

Q. When was that, if you recall?

A. I think that is about nine years ago.

Q. Mr. Berg, you are familiar with trade marks and trade names in the clothing trade, I presume?

A. Oh, yes, there are many.

Q. You know the Alpacuna trade name, of course?

A. I do.

Q. What does that word mean to you?

MR. WILLIAMS: If your Honor please, I object to this line of testimony for the reasons heretofore stated; namely, that even though they may bring in a great mass of testimony to show some people do know what this word means actually as applied to this cloth or any cloth would not at all negative; that is, legally negative proof already shown that the great portion of the public would be mislead.

The fact that some people would not be mislead does not mean that others would not be mislead.

MR. McCracken: Mr. Examiner—

TRIAL EXAMINER REARDON: I do not need to hear you because I will overrule the objection and grant an exception to counsel for the Commission.

Off the record.

(There was a short discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

MR. WILLIAMS: It is understood then that my objection goes to all questions without my repeating it each time to this line of testimony on the ground that even though he would understand what the cloth is made of, and a lot of other people, that still would not satisfy anything in this case against the mass of testimony showing a lot of other people would not understand. That is my objection to the whole line, so I will not interrupt continually and it will be understood.

TRIAL EXAMINER REARDON: Off the record.

(There was a short discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

MR. WILLIAMS: May I have an exception to all this line of testimony?

TRIAL EXAMINER REARDON: Exception noted.

MR. McCracken: It is understood, Judge Williams, if you do not interpose an exception at any other time I will know that you have a blanket exception.

TRIAL EXAMINER REARDON: In other words, both sides agree automatically they have an exception where an adverse ruling is made on an objection.

MR. WILLIAMS: The only thing is this may not be an adverse ruling.

MR. McCracken: You do not mean to specify each exception. Let us put this on the record, that Judge Williams objects to all questions of any witnesses called by the Respondent which go to their understanding for the general reputation of the word Alpacuna on the ground that his testimony if believed would sufficiently establish confusion in the minds of the public, and whether he interposes an objection to each question or not, which I understand he does not intend to do, it is understood the objection is overruled and exception noted for the Commission; is that correct?

TRIAL EXAMINER REARDON: That is correct.

By MR. McCracken:

Q. What does the name mean to you?

A. It means to me simply a trade name and I do not know whether I am presuming or not, Mr. Examiner, but I conducted a survey myself; I am a bit selfishly interested in Alpacuna, it being one of our best selling coats, and Arnold Constable is a store with a one hundred and fifteen year reputation which we are anxious to keep for another one hundred and fifteen years, and I made it my business during the last week to conduct a survey amongst our customers in our clothing department in order to ascertain what they thought Alpacuna was. I want to be sure that the customers felt like I do, that it was a trade name.

Q. Have you a record of that survey?

A. I have.

Q. Did you personally conduct the survey?

A. I interviewed about two hundred and fifty customers during the past ten days, and if I may I would like to read you the questions I asked them.

TRIAL EXAMINER REARDON: You asked the same questions of each customer?

THE WITNESS: Yes, sir. I had a printed form. I did not take their names, I was simply interested in what their answer was, rather than where they lived.

By MR. McCracken:

Q. You established a reputation, as it were?

MR. WILLIAMS: This is objected to on the ground that we have no means whatever of checking up on that survey.

MR. McCracken: Mr Examiner, the Commission in its case asked every one of the witnesses called with respect to this name the question as to the general impression upon the public mind of this word and I am simply replying to that line of testimony.

MR. WILLIAMS: I am not objecting on that ground at this time, Mr. McCracken.

TRIAL EXAMINER REARDON: The witnesses were called.

MR. McCracken: He also asked those witnesses as to what the impression on the public mind was; he called a number of Professors and Teachers from schools and had them testify the public was exposed to the word Vicuna and asked them what was the impression on the public mind of the word Alpacuna.

MR. WILLIAMS: I understood the Examiner to let in the matter on the various ways that the public was exposed to this word, and to rule out the matter with reference to their opinion as to what the public thought on that subject.

TRIAL EXAMINER REARDON: Is it my belief that

I let them express their own opinions, but that I ruled out their statements of what the public thought.

MR. McCracken: I think you did that in questions where they had been questioned as to the public. What I am trying to establish by this witness is a survey made by an expert who in order to obtain the very thing, a line upon the very thing which is the issue in this hearing; namely the impression on the public mind of this trade name, interviewed the public, and he gives his personal results of those interviews. I think we are agreed it is the sole question in issue in this case, the impression upon the public mind of this word, what it means to the public.

TRIAL EXAMINER REARDON: I will tell you what I will do. There is not much of this testimony?

THE WITNESS: You can read this one and they are all alike except I would explain the answers, it would take about ten seconds.

TRIAL EXAMINER REARDON: You have not the answers written down?

THE WITNESS: Yes, sir.

MR. WILLIAMS: Who wrote them down?

THE WITNESS: I did and I questioned the customer.

TRIAL EXAMINER REARDON: Will you have the answers marked for identification?

MR. McCracken: Yes, sir.

TRIAL EXAMINER REARDON: I will tell you what I will do, I will let the witness make his statement and I will entertain a motion to strike it immediately thereafter and you will have your exception and the Commission will pass on it.

MR. WILLIAMS: All this goes in subject to my motion to strike.

TRIAL EXAMINER REARDON: Yes.

THE WITNESS: There are approximately two hundred and fifty separate slips here each one indicating the questioning of a particular individual in the clothing department.

By MR. McCracken:

Q. Are they all identical as to the questions?

A. Yes.

Q. Will you read the questions that you asked.

A. These are all people who visited our clothing department and made a purchase; customers, in other words. I said to the customer, "We feature a coat called Alpacuna".

TRIAL EXAMINER REARDON: Let the paper stating the questionnaire to the public be marked Respondent's Exhibit 40 for identification.

(The paper referred to was marked "Respondent's Exhibit 40" for identification.)

By MR. McCracken:

Q. Read it again, Mr. Berg.

A. (Reading) "We feature a coat called Alpacuna. Does Alpacuna signify to you a trade name?"

We have a "Yes" or "No" there and a place for remarks. If the customer states "Yes" then I ask him, "Does it mean anything else to you?" That was the extent of my questioning. If he said, "Yes" in answer to the second question I said, "If so, what?"

I did not attempt to compile these things. In about ninety-five per cent. of the cases here the answer was it signified a trade name and meant nothing else. In five or six per cent. of the cases some customers said it meant

an Alpaca coat, some said it meant an overcoat, some said it meant a soft coat, some, a hair coat.

TRIAL EXAMINER REARDON: Their answers are on these papers?

THE WITNESS: Yes.

MR. McCracken: I am going to offer them in evidence, your Honor.

TRIAL EXAMINER REARDON: They will all have to be marked for identification.

Off the record.

(There was a short discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

These slips or questionnaires of which there are 210 will be received by the Reporter and given the proper Respondent's Exhibit numbers for identification.

(The papers referred to were marked "Respondent's Exhibits 41-A, serially to 41-Z and 41-Z-1 serially through 41-Z-184" for identification.)

By MR. McCracken:

Q. Did any one of the customers with whom you conferred refer to the name as indicating a combination in which Vicuna was included?

A. Not in a single instance.

Q. There have here been included in evidence in the Commission's case some advertisements in which the manufacturer or the retailer of this overcoat used the phrase, "There is only one Alpacuna". What does that phrase signify to your mind?

A. It is very easy for me to recognize that phrase because it is a very common practice in our industry. I know in a great many cases where a manufacturer goes

into a city and does good business with one good store in a city who feature one coat, and there are thousands of trade names in our industry; in that case, he cannot sell it to another retailer under the same name so he might use another name.

Q. For the same garment?

A. Yes.

Q. Sold to another retailer?

A. Yes.

Q. Do you know of any instances, or would this affect your answer if it was called to your attention that the topcoat is made without a cotton backing and the overcoat has a cotton backing?

A. I would not see where that would make any particular difference.

Q. Both could be Alpacuna overcoats in the trade?

A. Yes. I know of several cases where they have suits with a like name, and others have it called by the same name.

Q. Does "Cuna" mean anything as a suffix to you?

A. In my twenty-one years of experience in the clothing business it definitely means to me it is just something nice to handle, it is soft, easy, supple. The term "Vicuna finish" is a common one in our industry for as long as I can remember.

Q. What does it mean?

A. It indicates a soft finish and nothing else, used on all types of garments, overcoats, suits, topcoats.

Q. Are you familiar with the pelt, the hair on the vienna animal?

A. Well, in my twenty-one years of experience in the business I have only seen two vienna coats. I do not think it has any commercial value at all. As a matter of fact, for that type coat the yard goods sells for about fifty or sixty dollars a yard. There is a very small quantity that comes to this country. I have not seen one in two or three years.

Q. In your experience does the word or term vicuna cloth or vicuna finish which you just described have any reference to that animal?

A. None at all. I do not think if you stopped a million people and asked them about it that three of them would know what you meant by vicuna cloth personally.

Q. Are you familiar with many of those trade names that were read by Mr. Tanlane awhile ago?

A. I believe we carry some of them in the store. I recognize one or two.

Q. Do or do not those that you recognize comport with the description of the word vicuna?

A. Yes, in the case where we are carrying merchandise in our store called pureuna which is a soft finish sweater but has no vicuna in it.

Q. Mr. Berg, what is the effect of a cotton backing on an overcoat as to warmth, durability, and so on?

A. I might talk from actual experience. We have sold thousands of Alpacuna coats. We very rarely get one back on a complaint. From a technical standpoint I believe that it helps the wear of the coat, adds to the weight, does not take away from the warmth, if you use a certain quality of wool on the face, a wool or mohair, or alpaca, as you please. We have found, while it has not been used in my experience for a great many years, we have found it the modern way to make overcoats that will give satisfactory warmth and strength and wear.

Q. Is it a fact that the Alpacuna overcoat was one of the first to carry cotton backing?

A. To my recollection, I would say yes. I could go a bit further. I remember we experimented with a piled fabric that came over from England with a cotton back and camel's hair on the face of it. This Alpacuna is an improvement over that fabric that was our first thought along those lines. We have been trying for many years to get a fabric to give the satisfactory service that we have gotten from a cotton backed overcoat like Alpacuna. I

have handled so much of it as the result of all of this experimenting.

Q. There are a number of other cotton backed overcoats?

A. Yes, I think every manufacturer makes one.

Q. And it is the growth of the last ten or fifteen years?

A. That is right, sir.

Q. Mr. Berg, this Alpacuna overcoat is lined, is it not?

A. Yes, sir.

Q. Is there anything in the lining which is an attempt to hide the cotton back or which does hide the cotton back?

A. I do not think so at all.

Q. There is no doubt that when you looked at the overcoat you would know it had a cotton back?

A. That is a question. You would have to know something about it. We tell our customers that when they buy it, we tell it to the customers. In my experience when you go to a custom tailor and spend one hundred and fifty or two hundred dollars he always full-lines it. It is a luxury, and adds to the luxury of the coat.

Q. Do your salesmen under your direction tell your customers what is in this coat?

A. Yes. We advertise it that way in newspapers.

Q. You advertise it as having a cotton back?

A. Yes, sir.

MR. McCracken: I think you may cross-examine.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By MR. WILLIAMS:

Q. I think I understand you to say you were the first

to use this type of material, a coat made from this type of material?

A. We were the first to present the Alpacuna overcoat.

Q. Had you used others?

A. Not with a cotton back, no, sir.

Q. Was Alpacuna the first one to your knowledge that used that name with a cotton back?

A. That used what name?

Q. Alpacuna, or any "Cuna".

A. The first one to my knowledge in an overcoat.

Q. That was this Respondent's article?

A. Yes, sir.

Q. Would you be apt to know if there were others prior to that from your experience?

A. It is a long time ago, and not having any interest I probably would not remember. I might have known of it through advertising. I do not remember now.

Q. Do you remember when you took on that line?

A. I would say about nine years ago. I did not make any attempt to determine the exact date.

Q. It could not be as long as thirteen or fourteen years?

A. The Alpacuna? Oh, I am definitely sure it is not anything like that.

Q. You say in your advertisements you describe the content of the coat as having a cotton backing.

A. Yes, sir. We conducted a very extensive campaign on the Alpacuna coat last fall season and our ads carried the fact it had a cotton back.

Q. Your topcoat advertisement, of course, naturally would mention it was all wool, though?

A. We in some of our ads, we do say the topcoat contains Alpaca, Mohair and wool.

MR. WILLIAMS: I will ask that this newspaper clipping be marked Commission's Exhibit No. 112 for identification.

TRIAL EXAMINER REARDON: The advertisement may be marked for identification as Commission's Exhibit 112.

(The newspaper clipping referred to was marked "Commission's Exhibit 112" for identification.)

MR. WILLIAMS: Commission's Exhibit No. 112 for identification is a newspaper advertisement of the Alpacuna topcoat as advertised by Arnold Constable, and before reading from this advertisement I would like to offer it in evidence.

MR. McCracken: I guess you will have to offer it when you get back in your own case. In the proceedings to which we are accustomed we offer them only in our own case.

TRIAL EXAMINER REARDON: It is marked for identification. You may refer to that advertisement as an advertisement for identification, but you may not read from it.

MR. WILLIAMS: I am offering it now as an exhibit, if your Honor please.

TRIAL EXAMINER REARDON: You may renew your offer later.

MR. WILLIAMS: I would like to have it now and except to the ruling of the Examiner.

TRIAL EXAMINER REARDON: I think we will overrule the objection. Commission's Exhibit 112 for identification will be admitted in evidence as Commission's Exhibit 112.

(The newspaper clipping referred to, heretofore marked for identification "Commission's Exhibit 112", was received in evidence.)

By MR. WILLIAMS:

Q. Referring to Commission's Exhibit No. 112 I note that you state in that advertisement amongst other things the following:

"Alpaca plus mohair, plus wool, combined with style smartness and impeccable tailoring," and so forth."

As a person who has been in the merchandising business for many years do you not think that a person, a member of the public reading that and then running across an advertisement of an overcoat without the description being pretty plainly given; in other words, if it were not fully described in it, that the person would be justified in drawing a conclusion it was made out of the same material as a topcoat?

A. I cannot understand that question because people don't buy coats for that reason. We do not find customers come in and say to us, "Give us a coat with alpaca and mohair and wool in it".

Q. You must advertise that same value; you name those items, therefore, they must be of value?

A. We qualify that; we say the combination means a soft, silken garment made of alpaca and mohair and wool. That is why people buy this.

Q. Therefore, when you advertise this topcoat in that way and I come into your store to buy an overcoat you do not have that description in the overcoat?

A. In the ads?

Q. No. I am now talking about the coat, itself.

A. That description does not appear on the topcoat itself.

Q. I understand, but suppose I see this in the paper and I miss the advertisement about your overcoat; I come in and say, "I would like to have your Alpaca overcoat." I have already seen the ad here as to your topcoat and I have seen it is a completely wool coat. Would I be justified in assuming the overcoat was made out of the same fibres?

A. How would you know we had an overcoat? I am trying to find out how to answer this correctly. If you read an ad for a topecoat you would not ask for an overcoat.

Q. The reason is if you sell a topecoat you would probably sell an overcoat.

A. It is very rare in our business that a customer comes in and asks for something else.

Q. I am saying it is a common thing for a manufacturer to make a topecoat and an overcoat?

A. Yes.

Q. Suppose I think this looks good, suppose I ask you if you have an alpaca overcoat, your answer is yes?

A. Right.

Q. Am I perfectly right in assuming the two coats are made of the same fibre content?

A. They are, but the overcoat has a backing.

Q. Then they are not made wholly out of the same fabrics, are they?

A. No.

Q. Would I be justified in assuming they were made out of the same fibres?

A. I do not see how you could think so.

Q. Would I be justified in drawing this conclusion?

A. I do not think so.

Q. In other words, names don't mean a thing in the world.

A. Alpacuna would signify a type of coat.

Q. What type of coat?

A. A soft coat that contains alpaca, mohair and wool.

Q. How about the other that contains thirty-three per cent. cotton?

A. We tell it to the customer.

Q. You mean to say that you would tell me if I should come into your store to buy that that coat was not of the same fibre content wholly as the topecoat?

A. We most assuredly would tell you if you ask us.

If you came into our store and said, "I saw your ad. Is the content of the overcoat the same as the topcoat," we would say, "No."

Q. Assuming I had seen this ad and on the strength of that ad I want to get an overcoat; I ask you if you have an overcoat and you say "yes."

A. That is right.

Q. Would you volunteer information regarding that overcoat?

A. In a great many cases we do.

Q. You would not always?

A. Certainly not.

Q. Do you mean to say that your salesmen know the composition of those coats?

A. They do.

Q. As I understand you then, you feel that the public have no right to draw any conclusions from the trade name as to the content of the article in question?

A. That is right, sir.

Q. In other words, they don't mean anything?

A. Trade names? They mean very little, practically nothing.

Q. They mean something, don't they?

A. If you are talking about this particular one, I would say it means nothing. There are some trade names that mean something. If you are talking about Alpaca particularly it does not mean anything.

Q. Some trade names do mean something to the public?

A. Of course.

Q. They are justified in drawing conclusions from the trade names?

A. It depends on what the trade name is. My answer is yes.

Q. If a person knew of an alpaca and vicuna, and some people do know, the record shows that they do, would not that person be perfectly justified in drawing the con-

clusion that the article in question here was made of alpaca and vicuna?

A. I would say that the person who knew what vicuna was would not think that an article that he could buy for forty dollars would have any vicuna in it.

Q. Suppose somebody saw these pictures here in these Dictionaries, they do not tell them anything about how expensive it is; they say it is a soft, fine wool. They would have no reason to believe that it is terribly expensive. They may believe that they can get it for forty dollars.

A. From the descriptions I heard they would not expect vicuna, they would expect a soft fibre.

Q. You see these pictorial representations of the animal?

A. Yes, sir.

Q. You know dictionaries and other books contain these pictures?

A. Yes.

Q. Any one seeing these animals upon running through a book would not necessarily know they would not be able to buy a coat for forty dollars containing this type of wool?

A. I do not think so. It would be an isolated case within a hundred million, but if you are talking about people who do know about vicuna they would know they are very rare and they would not expect to get it in a forty dollar coat; if you are talking about people who know anything about it they would not expect to have it in a coat at that price.

Q. A great many people have visited the New York World Fair both this year and last year.

A. Yes.

Q. There are a great many vicuna there?

A. I doubt whether these people even dream they are used for commercial purposes to make coats out of; they do not tell them that.

Q. When they run across the word alpacuna would not that actually raise some question in the person's mind?

A. You may be talking about somebody who may think that way, but my answer is no.

Q. How about "alpa"; does that indicate anything in the way of the fibre content?

A. Yes, alpaca; alpaca is a commonly known article. As a matter of fact, in this regard some of the people say they would expect an alpaca hair coat or an alpaca coat.

Q. If the first part of that word Alpacuna would indicate alpaca, what would the second part indicate; namely, "cuna"? ^c

A. I would not know anything about it.

Q. Then a person coming up to your store, after having seen these animals in that World's Fair exhibit would not have any idea about the yardage value of that stuff?

A. I doubt that very much.

Q. They would not know it?

A. Perhaps, in a rare isolated case, but as far as the general public is concerned I would say definitely no.

Q. They would not have any idea of the value of a cloth made from this wool?

A. No.

Q. They would not be repelled by the idea, as you say, it would be too expensive to be contained in a forty dollar coat?

A. I think you are talking about one person out of so many it is negligible. If you are talking about people generally, I would say that out of all the people that go to the Fair I doubt whether two per cent. would ever remember they saw it, but it would not mean anything to them when the ad says alpacuna. I do not think alpacuna would make a person remember he saw a vicuna any place.

Q. You say similarly the mere fact the first part of the name does indicate something and then a person, seeing these animals at the Fair, and they are also in the advertisements in the papers from time to time, and we

have seen some of them here in the books, would not be justified in speculating as to the meaning of "cuna" in connection with that coat?

A. That is right, I do.

Q. That is what you would call fair advertising for a responsible business house in this town?

A. What?

Q. The use of the word which the record shows some people would think meant in connection with the word alpacuna, that "cuna" meant vicuna?

A. Yes; I do not think it means vicuna at all.

Q. You think it is perfectly proper to advertise two coats under the same name when one is wholly wool and the other is thirty-three per cent. cotton; you think that is fair, too?

A. I do.

Q. When warmth is used in connection with clothing what ordinarily is thought of as to fibre content;— what ordinarily is associated with warmth in connection with clothes?

A. Softness, pile, nap.

Q. Is it not wool, as a matter of fact?

A. Yes.

Q. People generally think of wool when you say warmth, don't they?

A. I think so.

Q. And also lightness?

A. You mean in weight?

Q. Yes.

A. Not necessarily.

Q. Not necessarily, but do most people think of wool as being light and warm?

A. As a matter of fact when someone comes in to buy a topcoat for spring they want a lighter coat; if they want a heavier coat they want that for fall. They would not think in terms of lightness.

Q. Weight is not always associated with warmth?

A. I would say in most cases it is.

Q. Isn't that one of the points you make here, actually; because this coat is made of this construction it is lighter. It says it is lighter and warmer.

A. It may be lighter than the average overcoat, but heavier than the topcoat.

Q. Well, of course,—

A. Well, that is the point I wanted to make.

Q. There is no way for a member of the public who saw that this topcoat was wholly wool to determine for himself whether or not the overcoat was wholly wool; is there?

A. You have to ask the salesman.

Q. The customer would be dependent upon the store?

A. Oh, yes, I would say the store and the sales people, of course.

Q. You think it is perfectly proper to so advertise a name in connection with garments in such a way as to make the public dependent absolutely on the store to tell them the content of the coat?

A. Judge Williams, I would say in answer to that we would not advertise the coat for nine years if it had not been perfectly proper to do so. We knew what we were doing. We have been with this coat since its inception. We cannot see anything improper in using the trade name. That is common practice throughout the industry in all kinds of merchandise. For instance we have—

Q. Of course, that would depend upon the salesman and would tend to be an issue then between the purchaser and your salesman as to what the content of that coat was in some cases?

A. We make it our business to educate sales persons as to the contents of a coat like this so that they can tell the whole truth to the customers.

MR. McCracken: You were about to give another instance when you stopped.

THE WITNESS: It was a little far fetched. For instance, in ladies' pajamas we have "Tomnies." What does "Tomnies" mean in relation to pajamas? It means nothing. It may be a soldier somewhere in the world, I do not know. Trade names are very peculiar things. It is something a manufacturer builds up for himself and the store builds up if they have the right selling methods.

By MR. WILLIAMS:

Q. Let me call your attention to page 314 of the record, cross-examination of Mr. Weintraub?

A. Who is that?

Q. This is the testimony of Mr. Weintraub.

A. He is one of our salesmen.

Q. He is one of your salesmen?

A. Yes, sir.

Q. I shall read the questions and answers.

(Reading): Cross-examination by Mr. Williams:

"Question: Mr. Weintraub, you say you do not recollect talking to the lady at all . . ."

In other words, that is referring to a witness who previously testified as having talked to Mr. Weintraub about this thing.

I will continue reading the question:

"and secondly you did not know what the actual composition of that coat was as to the fibers?"

"Answer: All I know of the overcoat is that it has a face of a hair cloth and wool and a cotton backing.

"Question: But you do not know what hair cloth and wool?"

"Answer: No."

A. He said it has hair and wool with cotton backing.

Q. He said he did not know what type of hair and therefore he did not know whether it was vicuna or not.

A. He did not say it was vicuna.

Q. That is the answer to the question, anyhow. His testimony followed the testimony of a Miss Link which began on page 310, and on direct examination on page 311 she stated:

“Mr. Weintraub sold me three or four of these coats. I asked him what the four famous fleeces contained in the fiber content were and he said, ‘Camel’s hair, mohair, alpaca and llama,’ and there was a picture of the llama on the silk label inside the coat.

“So I said, ‘Well, where did the word Alpaca originate or how did it originate?’ He said, ‘Well, there is a small portion of vicuna in the coat.’ So I said, ‘Then there are five famous fleeces.’”

A. I cannot put those two answers together.

TRIAL EXAMINER REARDON: This is only argument.

By MR. WILLIAMS:

Q. I am trying now to ask you if it is fair for your store and the others to put the public in the position of entering into a controversy with the salesman as to what the salesman said the thing was composed of?

A. Inaccuracies are one thing and truth is another. Just what this salesman said I cannot tell you. It would seem that in one case he said it contained hair and wool and cotton backing and in another case he said it had camel’s hair and llama and something else.

Q. I am telling you a witness interviewed Mr. Weintraub, as this record shows, and she claims that is what Mr. Weintraub told her.

A. What did he say in answer to that?

TRIAL EXAMINER REARDON: That is a matter between Mr. Weintraub and the other witness.

THE WITNESS: What did he say? Did he agree to that? I certainly believe Mr. Weintraub. I myself have educated people in the department as to the exact contents of the coat.

TRIAL EXAMINER REARDON: We should not argue as to that. The record shows what Mr. Weintraub said and what the other witness said. Why go into that?

MR. WILLIAMS: I am trying to show the position in which the public is put.

TRIAL EXAMINER REARDON: Do not bring in with this witness what the other man said.

MR. WILLIAMS: He can be put on as an expert as to proper advertising and knowing the public.

I am asking whether or not he feels an advertisement that puts a customer in the position in which this prospective customer was put is fair advertising?

THE WITNESS: I cannot answer that without saying that a customer that comes into our store is properly informed.

By MR. WILLIAMS:

Q. According to your statement that coat has a little vicuna in it?

TRIAL EXAMINER REARDON: Off the record.

(There was a short discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

MR. McCRACKEN: I think you should call to the witness' attention that the alleged customer that interviewed Mr. Weintraub was not a customer at all

but an investigator sent in by the Federal Trade Commission, or rather she was a representative of the Better Business Bureau of this city.

By MR. WILLIAMS:

Q. Assuming that this lady is correct and she was sent there by the Better Business Bureau which is a responsible organization, is it not?

A. Yes, sir.

Q. And assuming her statement is correct:

“So I said, ‘Well, where did the word Alpacuna originate or how did it originate?’ He said, ‘Well, there is a small portion of vicuna in the coat.’ So I said, ‘Then there are five famous fleeces.’”

So, if that is a fact, that is misleading information, is it not?

A. If it is a fact; I doubt it very much.

Q. If it is a fact an ad that gives that kind of results or a name that gives that kind of results could hardly be considered a fair name for a fair advertisement?

A. You are basing it on an assumption?

Q. Yes.

A. I hate to answer a question like that. I would say it is not a fact.

Q. Assuming this testimony is correct will you answer that question, please?

A. I would not say it is a fact if that testimony was correct.

TRIAL EXAMINER REARDON: What is the use of going into this just now?

MR. WILLIAMS: I want to see how far the witness will go in defending a factual situation.

THE WITNESS: I know from my information and experience people that are sent to our stores or to

other stores from such organizations, and the Better Business Bureau do not follow the customary procedure that would be followed by an ordinary customer in doing what they do.

By MR. WILLIAMS:

Q. Nevertheless, they are people that come in honestly and do not try to mislead you.

A. They have some ax to grind, otherwise they would not be there. I do not know who the person was.

TRIAL EXAMINER REARDON: Off the record.

(There was a short discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. You say you conducted a survey and that you did not take down the names and addresses?

A. That is right.

Q. Did you do that with the idea of using it in this case?

A. I thought it was a pretty smart idea to do for myself.

Q. Did you have in mind this case?

A. No, I had myself and my store in mind.

Q. When was it made?

A. Within the last ten days.

Q. When you were notified to appear as a witness in this case?

A. As a matter of fact, I was not told until just the other day.

Q. You knew about the case, though?

A. Yes.

Q. You knew you would be called eventually?

A. Yes, eventually.

Q. When you made this survey you had this case in mind?

A. First myself and my store.

Q. You had this case in mind also, did you not?

A. It might have had something to do with it.

Q. You did not think to take the names and addresses so that this information might be checked?

A. I did not want to inconvenience our customers and it meant nothing in their mind whatsoever.

Q. Do you think that the third question would be calculated would raise up in the interrogatee's mind any idea of the content of the coat? Your second question said "Does Alpacuna signify to you a trade name?"

And you say "Does it mean anything else to you?"

Don't you think you ought to have gone a little further? Do you not think you should have said,

"Does it not mean anything as to fibre content?"

A. You may be right.

Q. That would associate the trade name ideal with the third question, would it not?

A. Not exactly. I said, "Does it mean anything else to you?" If it meant a fibre content I should think they would tell us. In a great many cases they did. A great many said, "Alpaca." Nobody said, "Vicuna." They also said, "A soft coat."

Q. If a direct question had been asked about fibre content—after all, the public in a haphazard way does not think through a whole proposition—would not that be a fair way to have gotten it?

A. We have places where they answer, "Alpaca."

Q. As far as the public was concerned you directed their attention to the trade name but not to the fibre content?

A. That was what I was most concerned with; that was my opinion, it was a trade name. I wanted to know if they felt anything else about it. I did not want to put any words in their mouths. I said, "Does it mean anything else to you?" That takes in fibre content, you see, or anything.

Q. In a broad sense, yes.

A. I wanted to give them an opportunity to answer in a broad sense.

Q. Don't you think if a real question had been asked as to fibre content with reference to the trade mark a lot of people would have thought about it and given a different answer?

A. I do not think anybody would have thought about vicuna no matter what I said.

TRIAL EXAMINER REARDON: At this point we will take a recess for five minutes.

(A recess was taken for five minutes.)

TRIAL EXAMINER REARDON: You may proceed.

By MR. WILLIAMS:

Q. Mr. Berg, you said that these coats are rarely sent back. What do you mean by that?

A. I mean on complaints because they did not wear or because they did not give satisfactory service.

Q. But you do get some back?

A. Very few; as a matter of fact, by percentage it is much smaller than most overcoats that we sell.

I might say in connection with that, Judge Williams, we have a great many customers who come back for more Alpaccas year after year.

MR. WILLIAMS: All right, sir. This witness is with you.

TRIAL EXAMINER REARDON: Re-direct-examination.

Re-direct-examination.

By MR. McCracken:

Q. Mr. Berg, is it a fact that a number of garments of different type and of different types are frequently sold under the same trade name?

A. I think the best examples are the national brand. Let us take one as a specific example, let us take Society Brand. That is a type of clothing made by Alfred Decker and Cohr in Chicago. They make suits and coats that retail from thirty-five to one hundred dollars.

Q. They are all called Society Brand?

A. Yes. Incidentally, they make a cotton backed coat, too.

Q. That is not an infrequent practice?

A. It is a common practice. As a matter of fact I would use Society Brand as an illustration of elaborating on the point I made before where they go into a city and they can only sell one kind; they can take another store in the same town and they can give them this same garment and call it Thomas Heath and put the Thomas Heath label on the same garment.

Q. So that I could go to one retailer and buy an overcoat called Thomas Heath and walk across to another retailer who had Society Brand and they would have identical overcoats made by the same manufacturer out of the same material?

A. Exactly.

Q. What is the difference between a top coat and an overcoat?

A. Usually it is the weight.

Q. Is a top coat always unlined or only partly lined?

A. There are certain types of top coats, they are dress coats, that are lined; otherwise top coats are always unlined.

Q. It is known as a light overcoat, is it?

A. That is right, sir.

Q. You heard some definitions read today and you yourself gave a definition of vicuna cloth as something made of wool and cotton with a particular type of finish, is that correct?

A. That is right, sir.

Q. So that if a salesman were to say that a garment

had a certain amount of vicuna cloth he might well be referring to the type of cloth?

A. I would say it has been done thousands of times in the clothing industry.

MR. McCracken: That is all.

TRIAL EXAMINER REARDON: Re-cross-examination.

Re-cross-examination.

BY MR. WILLIAMS:

Q. You did not mean to classify what you call a brand name, Fashion Park, for instance, along with a trade name such as alpaca?

A. They sell it under that name, "Society."

Q. That is known to be a general factory brand?

A. It is a trade name for their clothes.

Q. For all their clothes?

A. That is right.

Q. That is understood everywhere as being what you call a brand as distinguished from a trade name; you spoke of a brand name?

A. That is right.

Q. Such as Fashion Park clothes?

A. Exactly.

Q. This is evidently from an ad which we have here a trade mark for a distinctive type of coat; is it not?

A. The other indicates somewhat a distinctive type of clothing.

Q. Do you mean to say that you compare the Fashion Park Clothing ad or name with this "alpaca" as being in the same classification?

A. They make a hair cloth coat; maybe they have a name for it, too. I believe they do. I believe they call it Parazora or something.

Q. As I understand it, then, Fashion Park clothes would be equivalent to your saying Siegel clothes; that is equivalent to the alpaca?

A. That is right.

Q. Could anybody say alpacuna is equivalent to that type of top coat?

A. In "Society" they make a haircloth coat that they call—

Q. I am not asking you that. I am asking you if this type of garment such as Society Brand and Fashion Park—it is understood by everybody that Fashion Park is equivalent to Jacob Siegel clothes—in this case is that type of ad comparable to this alpacuna?

A. In principle I would say yes, certainly. It is the same thing, it is a trade name.

Q. Does this mean all his clothes are sold under the name alpacuna?

A. No.

Q. Does not Society Brand mean practically that?

A. No, it does not, because they have names for their hair cloth coat.

Q. But Society Brand clothes is equivalent to Arnold Constable and Company?

A. No; Arnold Constable advertises Society Brand.

Q. Society Brand clothes is given virtually as the name of the manufacture?

A. How about Thomas Heath?

Q. All right, that is the same thing. Does not that virtually mean to the public the manufacturer of that coat?

A. When a man comes in to buy an overcoat for thirty-five dollars is he to assume to get the same quality as for one hundred dollars because it has the same "Society Brand" on it.

Q. That is an argument and I am asking you a question, whether or not it is generally understood there is a line of clothes known as Society Brand Clothes—

A. That is right.

Q. (Continuing) which is no different from this thing here which says "Alpacuna."

A. There is a difference. That refers to a particular coat and the other to a line of clothing. I am trying to make that point.

Q. You took a long time to see the point.

A. I did not take a long time. You did not make it clear.

Q. As I understand, it is a perfectly fair practice to the public—

A. It must be.

Q. You do not even know what I am going to ask you?

A. You did say it is fair to the public.

Q. Is it fair to the public for a factory to sell the same coat under two different names in the same town?

A. Certainly it is fair. It is common practice.

MR. WILLIAMS: I hope this will not be argument.

By MR. WILLIAMS:

Q. It is a common practice for people to go to one store almost invariably; is it not a common practice for people to deal with one store?

A. Customers?

Q. Yes, that is my question.

A. Yes.

Q. Is it fair to me if I feel you are reliable and I want to deal with your particular store, to have to go to some other store to get a coat I saw advertised, as, for instance, Fashion Park Clothes, and you sell this identical coat under a different name? I see this advertised, and I like it; I am obliged to leave your store to go to some other store to get the coat I can buy in my own store.

A. I do not get the point at all. Maybe I am stupid but I do not just get the point.

Q. You say it is a common practice for people to be regular patrons of your store?

A. A certain number, yes.

Q. There are many people that look upon that store as their store, they can go there to get what they want?

A. Yes.

Q. You are selling Fashion Park clothes.

A. Yes.

Q. The same people that put out Fashion Park Clothes put out the same coats that you are selling?

A. The same people that put out Fashion Park Clothes put out the same coats that you are selling; they sell them to another store under a different name.

A. Yes.

Q. I see an ad and I like that ad and I like those clothes, and then I am obliged according to that to go to the other store away from the store I like to deal with in order to get what I can get in your store, to get what I want?

A. We would have advertised that same garment.

Q. I thought you said in the same town you do not advertise the same coat?

A. We could have advertised our garment which would have been the same.

Q. But we did not know that.

A. That is unfortunate for the store.

Q. I am asking the questions predicated upon the theory I do not know there are two different names for the same garment.

A. Let me tell you this, if you are a customer in our store and you want to buy an overcoat, the first place you would go to would be our store and you would go through our stocks and you would find a coat you would like.

Q. I would not find the coat I see advertised. Just assume that I like that coat that I see advertised.

A. You certainly would see the same coat but under a different name. People buy a coat because they like it, not because they see a name in the paper.

Q. Then, people do not usually go to a store because they see an advertisement?

A. Of course.

Q. I am predicating these questions upon a theory whether or not this practice is justified.

I see a coat advertised under a different name from the one you sell as Fashion Park and I like that coat. I would have to go to the other store, apparently, as far as I know, to get that coat.

A. I have seen it happen a thousand times.

Q. I would be driven out of the store with which I prefer to deal?

A. That is for the customer to decide.

Q. Is that a fact?

A. It does not happen that way. If you are a customer you would come into my store to buy your overcoat. That is just as original as your argument.

Q. Do you not think some other people take business from you?

A. Of course; and we take it from them, too.

Q. A person would have to go to another store even though he would rather deal with you?

A. That happens with us many times I dare say.

TRIAL EXAMINER REARDON: The coat has a trade mark and the manufacturer that you buy it from cannot sell that to some other store under that trade mark; now, another store wants to compete with you and wants to get the trade and the manufacturer sells the same coat to him under a different name?

THE WITNESS: That is right.

TRIAL EXAMINER REARDON: And you take trade away from him and he takes trade away from you, but it is all to the great joy of the manufacturer that you both sell.

THE WITNESS: All sorts of frivolous things have to be taken in mind in advertising.

TRIAL EXAMINER REARDON: Surely.

By MR. WILLIAMS:

Q. If I desire to go a certain store and deal with them because I think I can trust them and they give me credit and I build up a credit standing I say it is not fair to drive me into some other store into which I have been driven merely because I have been double-crossed in advertising?

A. If you go into some other store you can buy with the same confidence with which you buy in our store as far as that goes.

TRIAL EXAMINER REARDON: Are you through with the witness?

MR. WILLIAMS: Yes, sir, I am.

MR. McCracken: I have no further questions of this witness.

TRIAL EXAMINER REARDON: The witness is excused.

. . . . (N. T. p. 771.)

SYLVAN F. FRIEDMAN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Will you please state your name for the record?

A. Sylvan F. Friedman.

Q. Where do you live, Mr. Friedman?

A. 5 Mamaroneck Road, Scarsdale, New York.

Q. What is your business?

A. I am in the manufacture of men's clothing, one of the firm of J. Friedman and Company, 115—Fifth Avenue, New York.

Q. You are manufacturers?

A. Yes, sir.

Q. Do you manufacture overcoats?

A. Yes, sir.

Q. Under what trade name, if any?

A. We have several trade names for overcoats, and top coats, for suits. I mean the names of various different ones, the name of course relating to this case is a name called Rockuna.

Q. How long have you been using that word, that trade name?

A. I do not know; in the neighborhood of six years or rather five years, I should say.

Q. How did you make up that trade name?

A. We have had for many years beginning back may be fifteen years a name called the Rockland Twist. We started with suits. Ever since that we have had a variation of Rockland Twist, Rockdale, and so forth, all of which are registered with the United States Government.

Q. Each was to apply to different garments?

A. Yes.

Q. You added to the word "Rock"—

A. We have been using "una" and not "cuna."

Q. Are you familiar with the word alpacuna?

A. Yes, of course.

Q. Is it a trade name?

A. Yes.

Q. What does that name mean to you?

A. Simply a type of coat. I should say in general a hair cloth or soft coat. That is about all.

Q. Is it a well known trade name?

A. Very well known name; in fact, I might add in general a hair cloth or cloth coat. That is about all.

Q. Is it a well known trade name?

A. Very well known name; in fact I might add in general the "una" has been so successful there is no doubt about it that most of the "cuna" or "una" have been used on that basis for what it stands for.

Q. You mean that suffix has acquired a certain accepted meaning in the trade?

A. I think so.

Q. What is the meaning?

A. Just a nice, warm, soft type of coat, usually in my estimation in a full lined overcoat. I have thought of it in the terms of an overcoat rather than a top coat.

Q. Is there any signification about a cotton backing in connection with it?

A. In addition to the fact it acts as a binder for that pile it is in my estimation one of the better features, because it allows the pile to be on top rather than through and through. It is not because of inferior cloth that everybody full lines them; it is for appearance and the feel of it. The fact that there is a cotton backing and the lining is backed on and it is completely covered because if you put a blue suit on and there is this cotton binding without any lining it is liable to tack on to the suit. It would have no effect on the wearing quality. It may help it to wear better.

Q. Have you any thought as to what the word alpaca would mean as to whether or not it is a derivative or have you thought of it as anything other than a trade name?

A. I think it is essentially a trade name. I always thought of it as just that.

Q. Are you familiar with vicuna cloth?

A. I have seen it, I believe; a sample of it.

Q. That is the cloth?

A. From the sheep.

Q. Tell us—

A. Not the sheep, the vicuna.

Q. Has the word any other meaning in the trade, the word vicuna?

A. I think it is something soft, a nice, lovely feel, that is about all.

Q. Were you here when those definitions from the Dictionaries were read?

A. I came in at the end.

Q. You are familiar with those definitions?

A. Yes.

Q. Are they generally accepted in the trade?

A. I believe so.

Q. You have seen an advertisement here, there has been reference to an advertisement here, by some stores showing this product that reads, "There is only one alpacuna." What does that mean in your mind?

A. Simply one coat with the name Alpacuna.

Q. Does it necessarily mean alpacuna overcoats and top coats would be exactly of the same construction?

A. No.

Q. You have also heard it stated in previous examinations that manufacturers sell overcoats, the same garment, to different retailers under different trade names?

A. Yes.

Q. Is or is that not a common custom?

A. Very definitely; we do it ourselves. We have two or three names for one coat in order to try to get a good distribution.

Q. The reason for that is you can better sell a coat to a customer in the community if he is known as the only one in the neighborhood that deals in that particular coat?

A. That is right.

Q. That is a common custom, is it?

A. Yes, sir.

Q. What is the difference in your mind between an overcoat and a top coat?

A. Principally the difference of weight, for a different time or a different season. An overcoat is for winter only and a top coat may be for any other time of year, spring or fall?

Q. With reference to a customer buying a top coat and then buying an overcoat under the same name would he necessarily expect it to be of the same construction?

A. I do not see why. I think he would assume it was

made of the same material. I do not think he would go any further.

MR. McCracken: That is all.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By MR. WILLIAMS:

Q. You say you have a number of coats with names that are similar to one another. What are those names?

A. Rockora; Roxbury; we had the original, Rocklyn; we have this Rockuna.

Q. You say that this type of coat is well known in the trade; do you mean the construction?

A. That is right.

Q. You do not want to say that the public understands that the—

A. I am only talking in the sense of being a manufacturer when we think of the name of anything we think of a type of coat.

Q. You do not know that the public knows that?

A. I do not know. I believe with all the advertising money we have spent; certainly all the alpacuna people have spent, they should get a general impression.

MR. WILLIAMS: I will ask that this newspaper advertisement be marked for identification as Commission's Exhibit No. 113.

TRIAL EXAMINER REARDON: It may be so marked.

(The advertisement referred to was marked "Commission's Exhibit No. 113" for identification.)

By MR. WILLIAMS:

Q. Suppose you would see such an ad as I am going to hand you now from the Evening Bulletin of Philadelphia, November 14, 1939, which has been marked for iden-

tification, Commission's Exhibit 113. Would you find anything from that to indicate to anybody that coat was different from the top coat of the same day?

A. Except the word overcoat.

Q. Would you think that it had a cotton backing?

A. May I read it? The only reason I know it is an overcoat is that the word overcoat is here.

Q. That description would apply to a top coat and an overcoat alike?

A. No.

Q. If you strike out the word overcoat and put the word top coat that would equally apply this description to the top coat?

A. Because down below it mentions overcoat.

Q. If you strike overcoat and substitute top coat, and you had all the descriptive matter except the word overcoat it would be perfectly proper?

A. That would be correct. Down here they mention top coats at a lesser price and one would assume something else was the reason for that.

Q. Generally the weight?

A. Well—that is right.

Q. As I have described it you feel it is perfectly proper to put on the market two coats bearing different names, but identical in construction, and at the same time describing one of those coats in ads as being the only coat; for instance, as here, "There is only one Alpacuna."

A. That is correct.

Q. When as a matter of fact there are two Alpacunas of totally different construction; you think that is proper?

A. I never thought of it before.

Q. Do you consider it fair to the public to say there is only one Alpacuna coat, and at the same time there are in fact two coats, one a top coat and one an overcoat of totally different construction?

A. I would not say that. There is one Alpacuna top coat and another one an overcoat.

Q. It does not follow that it is of the same fibre construction in the mind of the public; is that what you mean to say?

A. I would not say it automatically shows that it is. I would say it is the same coat.

Q. As a matter of fact it would not be the same coat, would it, in construction?

A. That is right, but I repeat essentially it is the same manufacturer; that is what I mean there.

Q. Here is a coat named "Alpacuna coat." Do you think the public would think those two coats were not of the same fibre constructions?

A. What do you mean by "the same fibre construction"? If the coat is different the fibre construction is different.

Q. I am talking about the fibre content?

A. The fibre content may vary with difference of weight.

Q. If you advertise a top coat and an overcoat under one name you are justified in the face of the public in putting a different set of fibres in one coat as against the other coat?

A. I do not see why not. It is the manufacturer's privilege.

Q. Do you not think the public has some rights of knowing what the contents of coats are?

A. I think the public is mainly interested in something that will wear and give them satisfactory service regardless of what they call it. It is something like Shakespeare and the Rose.

Q. I will say again, you mean to say the public has no right to know that two coats of different construction bearing one name are different?

A. I am not sufficiently familiar with that to know whether or not there are any differences. It seems one was a top coat that you are talking about and one is an overcoat.

Q. I mentioned two garments having the same name, but one having a different fibre content from the other, but do you think that the public would be apprised of that difference from the literature or the advertisements that you have seen here?

A. I do not think the public would think about it.

Q. If the public did think would say they would think that the same coat or coats bearing the same name would have different fibres?

A. That does not prove they would think.

Q. They might but they would not be likely to do so, is that your idea?

A. That is possible.

MR. WILLIAMS: All right.

TRIAL EXAMINER REARDON: Re-direct-examination.

Re-direct-examination.

By MR. McCracken:

Q. It has not been shown they have a different fibre content. Mr. Friedman, the testimony is both the overcoat and the top coat are made out of the same proportions of the same hair or wool of the same animals except that the overcoat has a cotton backing and a lining. With that in mind will you again answer Judge Williams' question in which he asks would you consider the public would be justified in thinking it had a different fibre content?

A. I do not think he would think about it.

MR. McCracken: That is all.

○ TRIAL EXAMINER REARDON: Re-cross-examination.

Re-cross-examination.

By MR. WILLIAMS:

Q. Mr. Friedman, do you want to say if I knew that

the top coat which is visible to everybody is made wholly of wool, and I wanted to get an Alpacuna overcoat I would not think it was wholly wool, but thirty-three per cent. cotton?

A. Assuming he may not be familiar with all of the facts he might think so. I do not think it enters the man's mind. I am sincere about that.

Q. Do you not think the general public has a preference for wholly wool overcoats as a rule when they buy and pay for them; is that true?

A. I suppose so. May I explain that a wholly wool garment may not be what you think it would be.

Q. You know perfectly well, do you not, that the public prefers a wholly wool coat if they go out to buy one?

A. Alpaca is not wool.

Q. It classifies as wool and it is understood to be wool?

A. That is right.

MR. WILLIAMS: That is all.

TRIAL EXAMINER REARDON: Re-direct-examination.

Re-direct-examination.

By MR. McCracken:

Q. Isn't it a fact, Mr. Friedman, that as Mr. Berg testified during the past nine or ten years there has been a growing demand for overcoats with cotton backing?

A. For that kind of coat, yes. It is the one saving item in the clothing industry.

Q. It is a growth of recent years?

A. That is right.

Q. If a man goes to buy an overcoat and finds it has a cotton backing he expects that?

A. That is correct. We actually use a label on all products; we use Rockuna and Rockora. Rockora is one cloth and Rockuna is the other. I do not know whether

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our customers think it should be the same or not but nobody has ever questioned it.

MR. McCracken: That is all.

TRIAL EXAMINER REARDON: Re-cross.

Re-cross-examination.

By MR. WILLIAMS:

Q. You still want to say where a coat bears a label such as this coat has with an animal of the type of the vicuna and the llama with other indications of South America, such as mountains, and so forth, a person would look at that and taking into consideration the advertisements that I read would think it was partly cotton; would the public think that?

A. I do not think he would. I never said he did.

MR. WILLIAMS: All right. That is all.

MR. McCracken: That is all.

TRIAL EXAMINER REARDON: The witness may be excused.

. . . . (N. T. p. 783.)

LESTER J. BARON was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Please state your name for the record.

A. Lester J. Baron.

Q. Where do you live?

A. Hotel Plymouth, 143 West Forty-ninth Street, New York City.

Q. What is your business, Mr. Baron?

A. I am associated with the firm of Goostein Brothers and Company, Incorporated, manufacturers of top coats and overcoats, in the capacity of woolen piece goods buyer and assistant to the president.

Q. What is your experience in dealing with textiles and have you made any special study of the subject?

A. I am a graduate of the Philadelphia Textile School.

Q. What year?

A. 1922. I spent about two years including summer vacations in practical experience in mills. I spent a year and a half as textile analyst with the United States Customs doing analysis work for the government in the Appraisers of Merchandise Division in New York City. From that time on for the last fifteen or sixteen years I have acted in the capacity of woolen buyer for various clothing concerns.

Q. Do you buy the raw wool or cloth?

A. The woolen piece goods.

I may add I was an instructor in woolens and fabrics for six years from 1923 to 1929, in the New York Textile High School in the evening sessions.

Q. You are familiar with the make-up of various types of woolen cloth?

A. I am.

Q. Are you familiar with the term vicuna as applied to cloth?

A. Yes, sir.

Q. Tell us what it means?

A. It may mean one of two things, either a fabric composed entirely or in part of vicuna or any soft fabric, anything of a soft luxuriant handle.

Q. Is or is not the cloth that is made from the hair of the South American animal, the vicuna, a common commercial article?

A. It is a very rare article and very costly.

Q. Is or is not the cloth you have secondly described as a soft-finish fabric a commercial article?

A. Yes.

Q. And that is usually made of what ingredients?

A. Any one of a mixture of numerous hair fibres in combination with wool; wool, alpaca, mohair, some llama, they all make a soft fabric.

Q. You heard those descriptions read this morning from the encyclopedias, and so on, did you not?

A. Yes, sir.

Q. Do they agree with your knowledge of the trade where such fabric is concerned?

A. One hundred per cent. I might add I would like to make one additional example: There is a common practice in the Textile trade to use names for more than one distinctive article such as vienna used in both of those categories, also a name "merino" which is used for finer quality of wool and also for a mixture of wool and cotton.

Q. What is alpaca?

A. Alpaca is the hair covering of the goat from Peru, also from other sections of the world, which is a certain distinctive animal called the alpaca, and also is a name used for mohair which comes from the goat, some of it from down in Texas as well as from China and other sections of the world.

Q. Which has nothing to do with the Alpaca animal?

A. No. The name of alpaca may be used for alpaca or a trade name for mohair. It also has been used in the past for those cheap office coats, which are called alpaca coats, but which do not contain any alpaca and contain part cotton and also some luster wool which is the cheapest grade of wool.

Q. That is a garment name?

A. It was. It has not been used recently but it was used when those were in demand.

Q. Of the two names, of the two; that is to say the

use of the word as applied to a garment made of hair of the alpaca animal or the use of the word as applied to an imitation or similar article made out of Texas sheep hair or what not—

A. Yes.

Q. (continuing) which is more common?

A. The latter.

Q. Mr. Baron, are you familiar with certain trade names as applied to garments?

A. Yes.

Q. Do you know the name Alpacuna?

A. Yes.

Q. What does that mean to you?

A. It is a trade name indicative of a garment manufactured by Jacob Siegel Company and distinguished from other garments of a similar nature made by other manufacturers. We of the clothing business have sought to advance the use of these trade names and the government apparently has agreed with that practice by the frequent registration of these names as being representative or identifying a garment that is manufactured by a certain concern.

Q. Does the name indicate anything else to you?

A. It means nothing at all.

Q. Does the word Alpacuna mean anything else to you?

A. In what way?

Q. You just described it as a trade name of Mr. Siegel's clothes?

A. Yes, sir.

Q. Does it mean anything else?

A. Nothing at all.

Q. You are familiar with these registrations I offered in evidence this morning, Respondents Exhibits 1 to 23?

A. That is right.

Q. You are also familiar with many of the names, either beginning or ending with the word "cuna" or "kuna" ?

A. That is right.

Q. Do they have any family resemblance or let us say any particular significance, the trade names as applied to the cloth, beginning or ending in "cuna" or "kuna"?

A. The only thing it might indicate is a soft, luxurious fabric.

Q. Both are, as a matter of fact?

A. We in the clothing industry feel with reference to any garment bearing these trade names, no matter what the article, it is soft and luxurious.

Q. It is not necessarily made out of any particular wool or hair?

A. It would be made out of anything at all to give that handle.

Q. Is there anything there to indicate that they are made out of the hair of animal that lives in the Andes, the vicuña?

A. Not at all.

Q. Is the vicuña cloth, the second type of cloth you referred to here; that is to say, a cloth is a certain pile, of a character which would resemble these garments bearing these particular trade names?

A. I do not understand that question.

Q. I think you described vicuña cloth as a cloth from the hair of the vicuña animal which is very rare or from certain other materials, such as wool and cotton with a spongy or pile finish—I do not want to put words in your mouth, but it was something like that?

A. Yes, that is right.

Q. Do these garments bearing the suffix or the prefix "una" resemble that cloth in any respect?

A. They resemble the latter; not the genuine vicuña.

Q. Are you familiar with the use of an advertisement such as, "There is only one alpacuna overcoat"?

A. That is right.

Q. What does that mean to you?

A. If you wanted an alpacuna coat you could only get it as manufactured by Jacob Siegel Company.

Q. Are you also familiar with the practice which has here been described by other witnesses of the same manufacturer selling the identical garment under different trade names to different customers?

A. It is done by practically every large clothing company in the industry.

Q. For reasons given by other witnesses?

A. For reasons given by others.

Q. It also applies to other lines of trade?

A. Yes.

MR. McCRACKEN: That is all.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By MR. WILLIAMS:

Q. According to my understanding of the definition that you give to the word "vicuna" it has one true meaning and one false meaning?

A. No more so than the definition in the Dictionary.

Q. According to the Dictionary definitions one is false and one is true?

A. No.

Q. One would mention "vicuna" without its having any vicuna in the article?

A. That is as correct as the other.

Q. Is it a false statement where one has no vicuna in it?

A. No.

Q. It is not?

A. No.

Q. How do you reconcile these statements: There is no vicuna in the cloth and yet it is called vicuna?

A. There is a practice in the trade to call any fabric of any such nature whether it is composed of vicuna or wool which gives a finish or a handle which resembles in

the handle a cloth by the name vicuna. By the same token the name marino is identically the same name used for that kind of wool as well as the cheaper fabric of wool and cotton.

Q. I wish you would supply some names.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. You talk about "in the trade". How could the public protect itself from buying the imitation vicuna cloth as against the genuine?

A. The public I do not think are buying vicuna cloth; they are buying a specific overcoat.

Q. I am not asking you that, Mr. Baron. I am asking you would the public be able to note the differences to distinguish those two things, the first cloth and the real true vicuna?

A. They would have to be a pretty good expert and they would have to be able to know price. The price is the thing.

Q. You say that the word alpacuna means nothing whatsoever to you as to fibre content of the article?

A. Nothing whatsoever.

Q. It does not mean a thing?

A. No.

Q. From where is that word derived?

A. Ask Mr. Siegel.

Q. Do you mean to say you are teaching in the public schools and do not know from where that is derived?

A. It is a coined word.

Q. Coined from what?

A. I did not know what was in Mr. Siegel's mind at the time that word was coined.

Q. I am asking you about what is in your mind as a teacher of the subject of textiles in the public schools?

A. There is no question as to fibre content any more than I would say that Gold Dust contains gold or Ivory Soap contains ivory. They are purely names.

Q. You say "Alpa" in there does not mean anything to you at all?

A. It means nothing to me other than a name, any more than Rockuna is a fabric that contains rocks.

Q. There is no comparison.

A. If you were familiar with the practice.

Q. All things that are two legged are not men, but all men are two legged.

TRIAL EXAMINER REARDON: You have the answer.

By MR. WILLIAMS:

Q. You as a teacher in the public schools would say those names indicate nothing at all to the public?

A. Nothing whatsoever.

Q. Therefore, names in connection with those articles in your mind have no value to the public at all?

A. Not as far as trade names of that kind are concerned.

Q. They do not mean anything at all?

A. No.

Q. If the word linen were on an article that would not mean anything at all?

A. Linen is a definite fibre.

Q. I am asking you what is your own understanding of what the term "alpa" comes from in that name Alpacuna?

A. I do not know. It may have come from Alpaca but it does not necessarily mean it did.

Q. Where did the suffix "cuna" come from; being a man who has taught in the public schools you should be able to answer that.

A. You might say the "e" went with "cuna" or with "alpa" making it "alpac".

Q. The common pronunciation of the word is alpacuna?

A. It might be with the first syllable, might it not?

Q. The common pronunciation of the word is "alpacuna".

A. It may mean one or the other. The "e" may go with the "alpa".

Q. The common pronunciation is "alpacuna". What would be the derivation of that part of the word "cuna" where you pronounce it "alpacuna" with the "alpa" as the first syllable and "cuna" as the second syllable?

A. Maybe the "cuna" is correct without the "e" and the "e" goes with "alpa".

Q. If you are going to put your own questions and answers I will be seated and let you handle the case for me.

I have said the common division of that word is "alpa" and "cuna".

MR. McCracken: I object to that question. There is not a line of testimony in the record that that is so.

TRIAL EXAMINER REARDON: It does not make any difference what it is. We are merely interested in asking the question of this witness. He has already said a number of times what his idea on that is. I do not think a repetition of that is necessary.

By MR. WILLIAMS:

Q. I am asking you, predicated upon my understanding the common pronunciation of that word is "alpacuna" and that, therefore, it is divided into the syllables "alpa" and "cuna" what does that connote to you? You are an intelligent fellow, you have been studying these things and know the vicuna.

Q. What does that mean to me or the public?

What does it mean to you, the origin of that word?

A. It does not mean anything at all.

Q. I suppose with reference to the public it would mean the same thing?

A. Yes.—Mr. Siegel could still make that coat out of cotton and still call it Alpacuna.

TRIAL EXAMINER REARDON: The witness has answered that question at least a dozen times.

MR. WILLIAMS: I realize that, your Honor. I want to be sure we understand exactly what his interpretation is.

By MR. WILLIAMS:

Q. You think it is proper, as an expert, to use a perfectly false construction of a cloth and give it the name of a well known article?

MR. McCracken: I object to that question. There is not a line of testimony with regard to anything of the sort.

TRIAL EXAMINER REARDON: I sustain the objection. We have the facts and the Commission can base their opinion upon those. He has testified to the facts. It does not make any difference what any one witness or two witnesses think; if there is a variance of opinion you cannot say who is right and who is wrong. The Commission will decide that, as long as we have the testimony.

MR. WILLIAMS: That is all.

* * * * (N. T. pp. 796 & 797.)

LESTER J. BARON resumed the stand and testified further as follows:

Re-direct-examination.

By MR. McCracken:

Q. Mr. Baron, something has been said in this case about the use of the term or phrase "There is only one Alpacuna", despite the fact that Mr. Siegel makes both a top coat and an overcoat; what have you to say about that?

A. The name "Alpacuna" is a registered name which indicates the manufacturer of the garment as being the Jacob Siegel Company, and the phrase, "There is only one Alpacuna", means that there is only one such firm that makes the Alpacuna coat, the same as there is a slogan with one of the automobile concerns, "There is only one Buick", and they make automobiles from about eight or nine hundred dollars up to four or five thousand dollars. There is a big difference in the quality and the manufacture of those machines, yet they are all called "Buicks". The same thing applies to the Eastman Kodak Company; they have a slogan, "It is not an Eastman if it is not a Kodak".

Q. Kodak is a coined word belonging to Eastman?

A. Yes, Kodak is a coined word belonging to Eastman.

Q. There are many types of Kodaks?

A. Various kinds at various prices. There are all kinds of Kodaks. Eastman makes various kinds and qualities, but there is only one Kodak; therefore, in the same sense there is only one Alpacuna, only one who makes alpacuna, the Alpacuna coat; there is only one Alpacuna.

Q. According to your understanding Mr. Siegel might make not one, but any number of garments and call them "Alpacuna".

A. Mr. Siegel might make any type of garment and

call it alpacuna. He might make a lumber jack and call it alpacuna. The name does not mean anything other than a coined name.

MR. McCracken: That is all.

TRIAL EXAMINER REARDON: Recross-examination.

Re-cross-examination.

By MR. WILLIAMS:

Q. You are well acquainted with the Siegel people?

A. I have known Mr. Siegel as being one of the leading figures in the overcoat field.

Q. You are well acquainted with them?

A. Yes.

Q. You say Buick has different priced cars, but you are not in a position to say the quality of the material is not the same?

A. What produces the difference in price?

Q. It may be the weight or the size of the car. I am asking you. You do not know the quality is at all different in the different cars?

A. I believe it is.

Q. You do not know?

A. I am not an automobile maker nor an automobile mechanic.

Q. You do not know; therefore, your answer is to be considered in that way?

A. Just for what it is worth.

Q. I will ask you the same thing with reference to the Kodak. You do not know there is any difference in the quality of the material at all?

A. You can buy one for ten dollars and one for a hundred dollars. I imagine it is not the same quality.

Q. I am talking about the type of material being the same quality.

A. I imagine the most expensive part of a kodak is

the lens. I imagine that would determine the price to a great extent.

Q. Basically you do not know whether it is the difference in material or not; it may be the fineness of the workmanship that is a determining factor?

A. That is right.

Q. It is entirely impossible to find clothes made out of exactly the same material but selling for greatly different prices?

A. Surely; there is a difference in the tailoring.

Q. Exactly so. The fact that one suit sells for twenty-five dollars and another sells for seventy-five dollars does not mean the cloth is not exactly the same?

A. It does not mean that.

MR. WILLIAMS: That is all.

MR. MCCracken: That is all.

TRIAL EXAMINER REARDON: The witness is excused.

(Witness excused.)

• • • • (N. T. p. 800.)

BENJAMIN LARKEY was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. MCCracken:

Q. Will you please state your name for the record?

A. Benjamin Larkey.

Q. What is your address?

A. 140 Market Street, Newark, New Jersey.

Q. You are in what business?

A. Retail clothing, furnishings.

Q. Where?

A. In Newark, Passaic, and Paterson.

Q. Under your own name?

A. Under the Larkey Company, Incorporated.

Q. Among other things do you sell overcoats?

Q. Yes.

Q. Do you sell the Alpacuna overcoat?

A. Yes, sir.

Q. How long have you known that overcoat?

A. Nine years.

Q. You have been selling it for that length of time?

A. Yes, sir.

Q. Is it a pretty good selling overcoat?

A. Yes, it is.

Q. What to your mind does the word alpacuna mean?

A. It is an identification of that particular overcoat.

Q. Identification with what?

A. With the overcoat that is made by the Jacob Siegel Company.

Q. Does it mean anything else to your mind?

A. No, sir.

Q. Does it occur to you as being a natural word or a coined word?

A. A coined word.

Q. Does it indicate in its coining any fabric content of the overcoat?

A. No, sir.

Q. Are you familiar with a cloth known as vicuna cloth?

A. I heard of it.

Q. You do not know it?

A. I never saw any fibre or any cloth.

Q. Do you know anything about the trade name of vicuna as applied to any kind of cloth?

A. Why, no.

Q. You are in the retail business?

A. I have been for forty-five years, yes.

Q. Are you familiar with the advertising of the alpacuna overcoat in which the words, "There is only one alpacuna", appear?

A. Yes.

Q. What does that mean to your mind?

A. That means it is a coat made by Jacob Siegel only.

Q. Does it mean anything else to you?

A. Nothing.

Q. Does it mean there can be only one type of alpacuna overcoat?

A. No, it does not mean that.

Q. You know there are at least two types?

A. Yes, I do.

Q. The top coat and the overcoat?

A. Yes, sir.

Q. Knowing that there are two types, does that term indicate any deception to you?

A. Not a bit.

Q. Now, have you ever had any complaints from the public to the effect that they were deceived by that advertisement?

A. Why in forty-five years of my experience I have never had any, not in one instance where any customer has ever asked for the content, in component parts of the cloth. The only thing that we found was that the customer was primarily interested in the wearing qualities of the coat which we guaranteed and the alpacuna coat was a guaranteed coat, and if it did not wear as well as the customer thought it should we always gave them a new coat.

Q. Is that still the policy?

A. Yes, sir.

Q. You know, do you not, that that coat has a cotton backing, the overcoat?

A. Oh, yes, I do.

Q. Is that a modern development of overcoats?

A. No, sir. As far back as I remember, which is for-

ty-five years, there was a chinchilla that was made with a—that was made of chinchilla a—cottonback.

Q. What is the purpose of the cottonback?

A. To bind it better, to give it strength, to make it wear better.

Q. In other words, is it or is it not superior in that respect to a wool coat?

A. Where there is a pile cloth I always thought it was superior.

Q. Have you ever known of an instance or is it a common trade practice for a manufacturer to sell the same identical garment under different trade names?

A. Oh, yes, it is very general. We ourselves do that. We have a trade name. We sell all our clothes under the name of Carter Hall from twenty-five dollars to seventy-five dollars. Then we have Carter Hall, Junior, which we sell from \$19.75 in a student's line. The purpose of our Carter Hall is to identify the Larkey Company with the clothes.

Q. That is a very interesting answer but that is not quite an answer to my question.

Is it a common trade practice for a manufacturer to sell the same garment as for example the Siegel Company under the name Alpacuna to you and sell that same garment to somebody else under another trade name?

A. Yes.

Q. You are familiar with that practice?

A. Yes, I am familiar with that practice.

MR. McCracken: You may cross-examine.

Cross-examination.

By MR. WILLIAMS:

Q. You say it is a common practice; when did that common practice develop? It was not so in your youth?

A. Yes, sir.

Q. Name some cases where there were two coats of

totally different construction bearing exactly the same name. I am not talking about Fashion Park; a trade name as distinguished from a brand name.

A. Oh, Lord, it is many, many years, I cannot go back that far and remember the name, but it is definite.

Q. What do you mean it is definite?

A. It is definite that manufacturers always followed that practice.

Q. Do you mean when you started out that was true?

A. Yes, sir.

Q. Name one case where that was true?

A. Alfred Benjamin.

Q. What was the trade name covering two identical coats?

A. Alfred Benjamin had a coat, it is a good many years ago, that was sold under two names.

Q. The same coat sold under two names?

A. Yes.

Q. Not two coats of totally different fabric construction sold under the same name?

A. I do not quite understand.

Q. In that period did anybody ever sell two different types of coats under one name; that is to say, two coats one of which was totally different in fabric construction from the other?

A. Do you mean two numbers?

Q. Two coats with different fabric construction under the same name?

A. I do not even know of one instance of that.

Q. That certainly would not be proper, would it?

MR. McCracken: I object to that question,—

By MR. WILLIAMS:

Q. Would that be in your judgment proper?

A. I cannot answer.

TRIAL EXAMINER REARDON: We have a lot of that kind of questions.

By MR. WILLIAMS:

Q. You say in all the years you have been in the business nobody asked you what the fibre contents of clothes was?

A. That is right.

Q. Nobody ever asked you if that is an all wool suit?

A. No, sir.

Q. Nobody in your forty odd years of experience ever asked you that question?

A. That is right.

Q. Not as to an overcoat either?

A. That is right.

Q. Nor as to a suit?

A. The only thing we find that the customer wants to know is, is the coat guaranteed and that is a guaranteed coat.

Q. I will ask you again: You do not know any single case in all your experience where anybody asked you the fibre content of a suit or overcoat, whether it was all wool or not?

A. When you say "all wool" that is not a fibre content.

Q. Certainly it is.

A. The fibre content is a silk or wool mixture. We have never had anybody asked us what percentage of silk is in this cloth or what percentage of wool is in it.

Q. I am asking about fabrics of the type in question here. You say nobody at any time has asked you what that coat was composed of as to fibre content?

A. No.

Q. You mention the fact that you sell some clothes under what you might call a brand name. There is a trade name—

MR. McCracken: May I ask just for my information what the difference is.

MR. WILLIAMS: They seem to make a difference.

TRAIL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRAIL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. Do you consider the word alpacuna as used here the same as Fashion Park Clothes or Society Brand Clothes; is that the same type of trade name?

A. No, sir.

Q. What is the difference between the two?

A. Society Brand—alpacuna is a trade name, from my contention, of a garment that is made by Jacob Siegel Company. Fashion Park is also a trade name and identification of clothes made by Alfred Decker and Cohn.

Q. Is there any difference between that type of branding with this particular name as applied here when you say Fashion Park Clothes as against just the alpacuna overcoat?

A. There is not any difference.

TRAIL EXAMINER REARDON: As a matter of fact, Mr. Williams, could not a trade name be a trade mark?

MR. WILLIAMS: I presume it could but I wish to ask a question here, if your Honor please.

By MR. WILLIAMS:

Q. Does that Fashion Park Clothes connote to you it is a whole line of clothes; does that not connote that to you?

A. Not especially.

Q. Does it or not?

A. It may and it may not.

Q. Is it a fact in this particular case Society Brand does indicate a whole line of clothes to you?

A. A full range of prices, yes.

Q. Yes, exactly.

Is not that type of labeling or trade mark or branding a little different where it says alpaca?

A. I do not consider it different.

Q. Is not the Fashion Park or as you say Society Brand Clothes, isn't that virtually the same as the name of a manufacturer to the general public?

A. I do not think the general public knows the average Decker and Cohn firm very widely.

Q. Is not the Society Brand of clothes equivalent to the name of a manufacturer to the public mind, to your knowledge?

A. I will repeat I do not think the public know that Fashion Park Clothes are manufactured by Alfred Decker and Cohn.

Q. What they understand is that the Fashion Park Clothes are manufactured by Fashion Park and Society Brand by Society Brand people; is that what you mean to say?

A. No.

Q. The public does not look at it that way?

A. No one could look at it that way.

Q. How could you look at it?

A. You would have to say Society Brand Clothes are made by Alfred Decker and Cohn, not by "Society".

Q. When the public goes to buy those clothes don't they look on that as the same as the name of the manufacturer; Society Brand, is not that the same to them as the name of the manufacturer?

A. I do not know what the public has in mind.

Q. You are not informed as to the public understanding of these various lines?

A. I take exception to your putting it that way.

TRIAL EXAMINER REARDON: He cannot testify^{as} to what the public knows about it.

By MR. WILLIAMS:

Q. You do not know what the public understanding of these terms are?

MR. McCracken: Just a minute. I notice that Judge Williams has served notice he is going to object to an offer of a careful investigation made by Mr. Berg and reduced to writing which discloses the public mind. If Judge Williams will say now he will withdraw any objection to that I will not object to these matters.

MR. WILLIAMS: I am following your direct examination in my cross-examination.

By MR. WILLIAMS:

Q. You do not know what the public understanding is as to these terms?

A. No, sir.

MR. WILLIAMS: That is all.

TRIAL EXAMINER REARDON: Re-direct-examination.

Re-direct-examination.

By MR. McCracken:

Q. You mentioned a little while ago, Mr. Larkey, that many years ago a coat was known as chinchilla. Is that the chinchilla animal in that coat or is chinchilla also the name of a fabric?

A. That is a fabric.

Q. There is such an animal, very high priced, as chinchilla, as a fur?

A. Yes, sir.

Q. There is a well known fabric known as chinchilla?

A. Yes, sir.

Q. Which has nothing to do with the fur of the animal?

A. Nothing whatsoever.

Q. Is it being sold today?

A. Yes, sir.

Q. Is not the same thing true of Karakul?

A. Yes, sir.

Q. Is it both the skin of an animal and a well known fabric?

A. That is right.

MR. McCracken: That is all.

• • • • (N. T. p. 812.)

DANIEL RHEINAUER was thereupon called as witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Please state your name for the record?

A. Daniel Rheinauer.

Q. Where do you live, Mr. Rheinauer?

A. 33 Riverside Drive, New York City, New York.

Q. What is your business, Mr. Rheinauer?

A. Manufacturing knitted outerwear.

Q. That would include sweaters and jackets?

A. Yes.

Q. Do you have a trade name for any of your garments?

A. We have.

Q. What is that name?

A. Valcuna.

Q. (V-a-l-e-u-n-a)?

A. Yes. Heatherdew.

Q. Is the word Valcuna a coined word?

A. It is.

Q. What is the name of your firm, Mr. Rheinauer?

A. New York Knitting Mills, Incorporated.

Q. It is located in the City of New York, is it not?

A. Yes.

Q. Has the garment which is made of Valcuna any content of the hair of the South American animal vicuna?

A. No.

Q. What is its make up?

A. It is made of fine wool and fine or rather superfine goat, mohair or angora, the hair of the angora goat.

Q. How did you happen to arrive at that name?

A. It was given to me.

Q. By someone else?

A. Yes.

Q. In obtaining it did you or did you not have in mind any animals to which either syllable of the word referred?

A. No.

Q. Are you familiar with the name alpacuna?

A. Only to the extent I have seen it advertised and I saw a coat in Gimbel's a few years ago in their window.

Q. What does the word alpacuna mean to you?

A. An overcoat.

Q. Does it mean anything else to you?

A. No.

Q. Are you familiar with the various terms some of which have been read this morning, coined words that either end or begin with the letters "e-u-n-a" (spelling)?

A. I know a few of them.

Q. You have one yourself?

A. Yes.

Q. You know some others?

A. Yes.

Q. What does it signify to you again, if anything, that suffix "cuna"?

A. It is a soft fibre, a soft fabric, rather.

Q. It does signify that it is a soft fabric?

A. Yes.

Q. Are you familiar with a cloth known in the trade as vicuna cloth?

A. I had the pleasure of handling a yard of it three or four years ago.

Q. That was a yard of cloth made from the hair of the South American animal?

A. It was.

Q. Are you also familiar with the cloth known commercially as vicuna cloth?

A. No.

Q. You are not familiar with that?

A. No.

Q. Have you ever examined or looked up the word vicuna in the Dictionary?

A. I did.

Q. What did you find?

A. Two contradictory definitions; one was an animal and the other was a cloth.

Q. A cloth made out of what?

A. Cotton and wool.

Q. You heard some of the definitions this morning that were read?

A. I just happened to refer to it in a dictionary.

Q. Do you happen to know what Dictionary it was?

A. I think it was Webster's.

Q. You have heard the sentence used here this morning, "There is only one alpacuna", and applied to Mr. Siegel's overcoats? What does that signify to your mind?

A. Well, it is just the same as far as my mind is concerned that the expression about there being only one Kodak. I never gave it any thought until now. I have the-

same impression, well, there is only one Kodak. If it is not a Kodak it is not Eastman's.

Q. I gather from that it means it is only manufactured by one person, one concern?

A. Only manufactured by one concern.

Q. Does it necessarily mean there is only one grade or type of that garment?

A. I have never given that any thought.

Q. You would not want to answer that, then, I guess.

A. No.

Q. Is it a common trade custom to your knowledge to show the same article under different trade names?

A. Yes.

Q. To different customers?

A. Yes. Sometimes it is essential.

Q. Why?

A. In order to get volume and sell two different people in the same town.

Q. Each one wants to be the exclusive selling agent of that name?

A. It is not that, but you have an account on one side of the street, you give him one name; and you have another account on another side of the street and you give him another name.

Q. You sell the same garment to both?

A. Yes, and to retail at the same price.

MR. McCracken: That is all.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By MR. WILLIAMS:

Q. You say you manufacture a coat named Valcuna?

A. Yes, a sweater.

Q. That name is well identified with that sweater?

A. It is.

Q. You would not want to give up that name, would you?

A. No.

Q. You are very much interested in maintaining it?

A. Sure.

Q. You know, nothing about the public understanding of these words, of course; you are just a manufacturer. Take Alpacuna, and such words, you do not know anything about the public understanding of them? All you know is of the trade?

A. All I know is our line. I am talking about myself. There is a full description of the garment; we have also guaranteed the garment against wear. One principal proposition I had in mind in establishing this yarn or material was to give the consuming public a material that would give them service, quality and softness and a price they could pay and get their money's worth.

Q. You say it goes out under a thorough description of its contents?

A. That is the one way it has been advertised. The tag guarantees the garment, or rather the tag carries our guarantee.

Q. You say you do not have the slightest idea of what a vicuna is?

A. A vicuna? I told you I looked up the definition in a Dictionary.

Q. How long ago?

A. About eight or nine years ago. You made a statement this morning I would like to question.

MR. WILLIAMS: I have no concern with that.

By MR. WILLIAMS:

Q. You were familiar with vicuna; you were familiar as long as nine years ago with the word vicuna?

A. Yes.

Q. Knowing that word you are also familiar with the word alpacuna, are you not?

A. Yes.

Q. Do you know what an alpaca is, and what a vicuna is?

A. Yes.

Q. Will you say when that word appeared to you, "alpacuna", left any impression in your mind at all as to the fibre content of the garment?

A. I knew at least it did not carry any vicuna.

Q. It contained none at all?

A. None.

Q. Why not?

A. Because there are only two thousand pounds a year brought into this country.

Q. Don't you suppose it could have been four or five per cent.?

A. It could not be one-half of one per cent. according to the number of garments that these people sell. That is my opinion. I do not know how many are sold, but it must be a substantial number.

Another thing is this: I saw some vicuna here about two years ago or so. It is brick red. That is a natural color and you cannot get it any lighter in color; you can get it darker, you can dye it, that is another point that would come to my mind in this connection.

Q. You do not know anything about the public understanding of this?

A. My understanding of the public is this—

What do you mean? Do you mean the man in the street, one hundred and thirty-five million people, or the people out on the farms, or what do you mean?

Q. The general public; you do not know their reaction to this type of name?

A. No.

MR. McCracken: Take for example the one hundred and thirty million he spoke of.

THE WITNESS: The one hundred and thirty mil-

lion know nothing about it. They probably could not pay nine hundred dollars for an overcoat.

By MR. WILLIAMS:

Q. You have seen vicuna for two hundred and fifty dollars?

A. No. The lowest price I have seen it at was three hundred and seventy-five dollars, and that was at Tripler's, oh, a couple of years ago.

Q. They have been sold for two hundred and fifty dollars, too?

A. I do not know. I saw it for three hundred and fifty-five dollars.

Q. The prices range from nine hundred dollars to three hundred and seventy-five dollars?

A. I saw it at three hundred and seventy-five dollars and at nine hundred dollars. I saw one at Tripler's at three hundred and seventy-five dollars, and I saw the garment in—what is the name of the store in 1410, right downstairs, I think it is Walker. I saw a garment in his window for nine hundred dollars. That is as much as I know.

Q. You do not know whether there might be one for one hundred and fifty dollars?

A. I do not know. At fifty dollars a yard, which is the price quoted to me, with three yards going into an overcoat it is not going to be sold at one hundred and fifty dollars unless it is a fire sale.

Q. You do not know whether the weights of cloth and different construction might change the price?

A. Well, when there is only such a limited quantity of this material brought into this country for each manufacturer who wants it there must be various weights I suppose.

Q. The point is you do not know?

A. I do not know.

MR. WILLIAMS: The witness is with you.

TRIAL EXAMINER REARDON: Re-direct-examination.

Re-direct-examination.

By MR. McCracken:

Q. Judge Williams asked you the question as to whether or not you advertised Valcuna sweaters showing the content and you answered yes. Will you elaborate on that question a little. What is the content of your sweater?

A. I gave that description, yes; superfine mohair and fine wools. When we first started out we advertised as Australian wool because we were using so much, but we finally found we could use Texas and Ohio products.

Q. Do you advertise it as Texas and Ohio?

A. No. I would not tell my competitors that; and I do not want it to get out of here, either.

Q. What words do you put in your advertisement as descriptive of this sweater?

A. That I do not know. Right now we do not advertise it at all; it advertises itself. The consuming public has accepted it and the demand for it is increasing.

Q. Did you ever advertise the fibre content?

A. Yes. Not the exact formula. We simply said woolens, simply goat mohair.

Q. You said you heard some statements made this morning that were inaccurate. Can you tell us what they were?

A. That was about two goats, over at the Fair, maybe they are stuffed, but they are not alive.

MR. WILLIAMS: They are alive, there are two of them.

THE WITNESS: Then they will not live.

MR. McCracken: I have no further questions.

TRIAL EXAMINER REARDON: Re-cross-examination.

Re-cross-examination.

By MR. WILLIAMS:

Q. You say you do not advertise your coats?

A. Not lately; we do not have to, the public is coming in and asking for it.

Q. The fact is when you have it stuck in the window it does not have a description?

A. It does so. We have the goat.

Q. Does it have any description?

A. Yes.

Q. That is attached to the coat?

A. It simply says the angora goat.

Q. It says that on the coat?

A. Not on the coat but the goat when we advertise.

Q. How long is it since you have advertised?

A. Recently we have been sending out a stuffed goat, a stuffed Texas Angora goat and with that yarns and materials and everything else has been going out to show the construction of the garment.

Q. I am talking about to the public.

A. The public sees them in the window.

Q. Does the public know angora goat always?

A. If they know about vicuna they know angora.

Q. You say all your customers have one of these advertisements?

A. I did not say that.

Q. When you say that is what you are advertising now that is the imputation, I thought. Will you clarify that?

A. My dear man, when I say I sent the advertisement to the customer that does not mean I advertise in every town, does it?

Q. You say you send these out to your customers?

A. One at a time.

Q. Where that advertisement does not apply all you see is the label on the sweater?

A. The valcuna, yes.

Q. If the public does not see the goat, the public probably does not know anything about the content of the sweater?

A. We give them service and that is all we can do.

Q. I am trying to show you do not sell your sweaters with a description of the content; that is a fact, is it not?

A. We advertised that years ago.

Q. I am talking about now.

A. Oh, now; what is the use, we haven't got money enough to pay taxes, where are we going to get money for advertising.

Q. It boils down to the fact you do not have any description with all your coats that go out?

A. We have tags.

Q. Is there anything in the sweater that gives the fibre content of the sweater when it goes out?

A. No.

MR. WILLIAMS: All right, I am finished.

MR. McCracken: I have nothing further for this witness.

* * * * (N. T. p. 825.)

MICHAEL KAPLAN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Please state your name for the record.

A. Michael Kaplan.

Q. Where do you live, Mr. Kaplan?

A. 28 Vaughn Avenue, New Rochelle, New York.

Q. What is your business?

A. We are in the mill business, textiles. The name of the firm is Gloversville Knitting Company.

Q. Where is that located?

A. Gloversville, New York.

Q. What kind of goods do you make?

A. We make hair cloth, coatings, top coatings, woollens, all types of fabrics.

Q. Do you manufacture any of them which are sold under trade names?

A. Yes, a good many of them.

Q. Give us some of the trade names, will you?

A. We do not happen to sell Mr. Siegel any of his alpaca coating but quite a number of the fabrics that are competing directly with his are ours.

Q. Any with the letters "una"?

A. Very frequently. I do not know all of them.

Q. Give us one or two.

A. The Rockuna coat mentioned this morning.

Q. Do you mean the cloth that goes into Friedman's coats?

A. That is right.

Q. Their trade name; is that yours or his?

A. That is his name.

Q. Can you give us any others that ends with the letters, "una" or "cuna"?

A. Macuna, I think that manufacturer has used some of our cloth and Llamacuna; I think there are quite a number.

Q. Have any of these cloths in them any of the hair of the South American animal known as Vicuna?

A. No, none of them.

Q. What is the general construction of the cloth, the general fibre content?

A. The general construction is alpaca, mohair and wool, and a cotton back.

Q. They are apt to have a cotton back. These over-

coats all are made in one construction. These "cunas" you are talking about designate cotton back overcoats.

Q. It does to your mind, it represents a cotton back coating?

A. Overcoating.

Q. Is that as distinguished from top coating or something else?

A. Yes, it is, very definitely.

Q. You know the name alpacuna?

A. Very well.

Q. What does that name signify to you?

A. A trade name of the Jacob Siegel Company.

Q. Does it signify anything else?

A. No. I would modify that; we are dealing a great deal in alpacas. I would say it was an alpaca coat, designating a soft feel. Alpacuna would be an alpaca coat with a soft feel to me in so far as differentiating from other alpacas which are made, "cuna" to me, meaning finish.

Q. I suppose many of the garments, the cloths you make have some quantity of alpaca in them; is that right?

A. I think so.

Q. Is the word alpaca applied in the trade only to the hair of the animal, or is it applied to another trade meaning?

A. I think it has been used on mohair type of fibres.

Q. Mohair made out of what?

A. Mohair made from these Texas goats.

Q. Would the word alpacuna—I think you have answered that question, you said it would be an alpaca with a soft finish.

Do you know the term vicuna as applied in the trade aside from this business of the hair of the South American animal?

A. I think in textile terminology there is only one term for vicuna and that is "finish". Vicuna fibre just is not a commercial product.

Q. What is the vicuna finish?

A. Any soft finish; it can be on cotton or rayons. It is not necessarily a part of wool.

Q. The term is applied in the trade to a finish, is that right?

A. Yes.

Q. You are familiar with the advertising of these various garments, I presume?

A. Yes.

Q. You have heard this statement criticized:

“There is only one alpacuna.”

What does that mean to your mind?

A. Well, to my mind it would designate that there is only one alpacuna coat manufactured by Jacob Siegel Company.

Q. Would it mean anything else to your mind, would it mean to your mind for example that there was only one garment carrying that name?

A. No. I think to my mind it designates Mr. Siegel's coat as differentiated from some of his competitors.

Q. Suppose Mr. Siegel would undertake to manufacture a line of suits in addition to overcoats; would it be a common trade custom for him to apply the name alpacuna to those, as well?

A. He could, very well.

Q. Are you also familiar with the fact that garments are sometimes sold by the same manufacturer under different trade names to different customers?

A. It is a very common custom.

Q. You actually know of that practice?

A. Yes.

Q. Were you familiar with some of these names? Were you here this morning when I introduced them in evidence? Were you familiar with some of these names ending in “una”?

A. Yes. Some happen to be my customers.

Q. In other words, you manufacture some of these cloths?

A. That is right.

Q. Can you tell us a few that you manufacture?

A. There is Macuna, Rockuna, Llamacuna; oh, there are probably half a dozen here.

Q. That you manufacture?

A. Yes. We sell the cloth. The manufacturers makes the name; we do not.

Q. Yes. I think you already told us that generally implies the same type of cloth?

A. Yes, a soft finish cloth fabric.

Q. Usually with a cotton backing?

A. Overcoating; there is quite a technical difference between overcoating and top coating.

TRIAL EXAMINER REARDON: Is it a fact that you sell the same identical cloth to two or more manufacturers who make overcoats out of it and use one of these trade marks, these "cuna" trade marks?

THE WITNESS: Yes. We sell the same cloth to let us say a thirty-five dollar manufacturer. That is a garment that would retail for thirty-five dollars; perhaps one at forty dollars, one at twenty-five dollars, the difference being in the make of the coat.

TRIAL EXAMINER REARDON: The difference is in the make of the coat.

THE WITNESS: In the tailoring of the coat.

TRIAL EXAMINER REARDON: You sell the cloth to them?

THE WITNESS: That is right.

TRIAL EXAMINER REARDON: You sell the same cloth to this person here who uses it in making overcoats he calls Rockuna?

THE WITNESS: That is correct.

TRIAL EXAMINER REARDON: And you sell the

same identical cloth to this person who calls it mac-una?

THE WITNESS: Correct.

TRIAL EXAMINER REARDON: That goes on for a number of these names?

THE WITNESS: Correct.

By MR. McCracken:

Q. They are made at different prices?

A. One manufacturer may put in a cheaper line than another.

Q. The same cloth would be in all three?

A. Yes sir.

Q. You emphasized the word "overcoat" when you were dealing with these names here. I assume that some of these as Mr. Rheinauer testified, some of these applied to garments such as sweaters and things of that kind?

A. That is right.

Q. And some to top coats and various other things?

A. That is right.

Q. Are you familiar with the term astrakhan?

A. Yes.

Q. What is astrakhan?

MR. WILLIAMS: I object to that, if your Honor please. That has no bearing on this case at all.

TRIAL EXAMINER REARDON: Are you going to ask many questions about that, Mr. McCracken?

MR. McCracken: Just as to what astrakhan is.

TRIAL EXAMINER REARDON: I will overrule the objection.

MR. WILLIAMS: Exception.

TRIAL EXAMINER REARDON: Exception noted.

By MR. McCracken:

Q. What is astrakhan, Mr. Kaplan?

A. Astrakhan is a construction, usually a knitted cloth made with a cotton back where they simulate the appearance of an astrakhan animal. It is a pile fabric, curly.

Q. Is it known in the trade?

A. It is called "astrakhan" but there is no similarity between the animal and the fabric.

MR. McCracken: You may cross-examine.

Cross-examination.

By MR. WILLIAMS:

Q. Do you give these cloths names yourself, or are those names made up by the manufacturer?

A. The manufacturer.

Q. They have those names pretty well established?

A. Yes. That is their responsibility.

Q. You are naturally expected to back up your manufacturers, of course?

A. In what sense?

Q. In the sense you would not want to see their business disrupted by a change of names?

A. We are not concerned about that. We sell them whatever we can sell at a given time. This fabric seems to have been the trend for a period of the last seven or eight years. In the next seven or eight years they may want to sell something else. We sell them their requirements. It does not matter whether it is cotton back or all wool or part rayon, we do not care what the fibre content is.

Q. You are not interested at all in sustaining your customers' trade names?

A. That is their interest.

Q. You have no interest in it?

A. No.

Q. Are you familiar with vicuna; the name, at least?

A. Sure.

Q. I think you already said you gathered from the name alpacuna that there was some alpaca in that garment?

A. I would gather that because we handle a great deal of alpaca. The first thought that would come to my mind is alpaca when I hear the word alpacuna.

Q. If there is something else in that coat besides alpaca would the thought occur to you that it would be vicuna?

A. The word vicuna—I know vicuna is not a commercial fibre. I say none; there may be a half dozen or a dozen a year or so. We do not consider that vicuna is something you can run a mill on.

Q. Don't you know that there are a great many more than that sold. Stroock sells them.

A. Stroock probably is the biggest user in this country, and I question whether he makes more than six or eight garments a year.

Q. Does he make more than six or eight of these garments?

A. I am questioning it.

Q. You are speaking as having knowledge of it.

A. I talk from a mill textile point of view and to us fibre has no commercial value because it cannot be purchased in sufficient quantities to warrant handling.

Q. What right would they have to use a part of a word that would be just as indicative as a suffix as the "alpa" would be as a prefix; what right have they to use that kind of word?

MR. McCracken: I object to that.

TRIAL EXAMINER REARDON: That is assuming too much from this witness as to what right somebody else has.

By MR. WILLIAMS:

Q. If you could draw that conclusion as to alpaca from the first part of that word why could you not draw the same conclusion as to vicuna from the last part of that word; why could you not do that?

Mr. McCracken: I object.

TRIAL EXAMINER REARDON: Objection sustained.

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. You are speaking from a manufacturer's viewpoint in answering these questions, is that true?

A. Only from the manufacturer's construction viewpoint are we interested.

Q. You are speaking merely from a trade standpoint as to the understanding of these various terms, not from any public understanding?

A. That is right.

Q. Did I understand you to say you think it is perfectly proper to sell two coats of totally different construction under one name? I am not talking about a brand name such as we might call Society Brand clothes. That of course, you understand. I am talking about what you call an ordinary trade name like alpacama; you say it is proper, do you to sell two coats of totally different fibre construction under that same name?

Mr. McCracken: I object to that question.

It is objectionable because the evidence is the coats are not totally different; they are identically the same except one has an additional item in it. It is argumentative for you to say, "Totally different construction."

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. You say using an ordinary trade name, not in the sense of Society Brand which is not an ordinary trade name, what you call an ordinary trade name; it is proper, as I understand you to say, to sell two coats under that name even if one would have thirty-three per cent. cotton in its make-up somewhere, and the other had wholly wool?

A. You are talking now about a top coat and an overcoat?

Q. Either top coats or overcoats showing under the same name where one is wholly wool and the other has thirty-three per cent cotton in it?

A. You can buy a Buick—

Q. I do not care about that.

A. If you are selling a top coat and an overcoat, let us say you can buy a small Buick and a large Buick.

Q. That does not mean the materials in those articles are not the same except one may be a lighter weight and what not.

A. I do not think the materials in two different makes of Buicks—

Q. You do not know anything about it; therefore, if you do not know, do not use a simile you do not understand.

A. Are you asking whether the same thing is in the top coat as is in the overcoat alpaca?

Q. Yes; would you expect to find thirty-three per cent. cotton in the overcoat bearing the same trade mark as a top coat which is wholly wool?

A. If you ask me from the technical side I will say the overcoat with the cotton back fabric is a better fabric.

MR. WILLIAMS: I move that be stricken out.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. Do you consider it proper advertising to the public to have two coats under one name when one is thirty-three per cent. cotton and the other wholly wool bearing exactly the same name?

A. Bearing in mind two distinct fibres, one the top coat and the other the overcoat, they are perfectly proper.

Q. Does the public know that? Would the public take that one name and dissect it into two different constructions?

A. I do not see your point. There are manufacturers that have a name for a top coat and use the same name for an overcoat.

Q. Do you think that is fair advertising to the public?

A. I think the public—after an item is accepted by the public and provides satisfactory service and wear I think that the public is being properly taken care of.

Q. The public is entitled to buy whatever it wants?

A. That is right.

Q. Do you not know the average public would prefer a wholly wool coat?

A. I do not think so, not from our experience.

Q. You do not have any real idea that the public knows what that overcoat is made of?

A. I think a good many do. We would much prefer making a wool back than a cotton back. Cotton backs to us are a headache.

Q. As a matter of fact you do not know anything about the public reaction, the consumer's viewpoint?

A. I am talking about the textile viewpoint. We prefer to make wool backs.

Q. Perhaps my question ought not to be asked; but you do not know anything about the public reaction?

A. All I know is the public is getting more for their money in that cloth than in the wool fibre.

Q. If a person bought a live rabbit and you give them a dead rabbit that is not giving a person what he wants. If you say you do not know, allright; but the other answer has nothing to do with the question, that is not your concern.

TRIAL EXAMINER REARDON: An argument is running along here which has nothing to do with the questions.

MR. WILLIAMS: That is all.

MR. McCracken: That is all.

* * * * (N. T. p. 839.)

MR. McCracken: I will call as the next witness for the Respondent, Mr. Arnold Schneider.

ARNOLD SCHNEIDER was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Please state your name for the record.

A. Arnold Schneider.

Q. What is your address?

A. 51 Madison Avenue, New York, New York.

Q. You are a member of what firm or corporation?

A. Schneider and Armitage.

Q. What is the business of that company?

A. We are fabricators and selling agents of knit cloths and woven cloths; we specialize in overcoating and topcoating.

Q. How long have you been in that business, Mr. Schneider?

A. Thirty-five years.

Q. You say you manufacture the cloth?

A. Yes.

Q. Just like the last witness, Mr. Kaplan?

A. Yes.

Q. Are any of those cloths sold under trade names by the garment manufacturer?

A. Yes.

Q. Will you give us some of the trade names?

A. Velgora.

Q. Are you familiar with the name alpacuna?

A. Yes.

Q. What does that word mean to you?

A. An identification.

Q. Identification of what?

A. Of an overcoat.

Q. Made by—

A. By the House of Siegel.

Q. Does it mean anything else to you, that word?

A. No.

Q. Are you familiar with a number of these trade names which I read off this morning and which are here in evidence as Respondent's Exhibits 38-A, B, and C, which begin or end with the word "una" or "cuna"?

A. Yes, many of them.

Q. What do those trade names indicate to your mind?

A. The trade mark of the House of Siegel has brought in its wake imitations of that coat and they all have used in their selling the ending of "cuna" or "una" or similar names due to the success of the House of Siegel and this product.

Q. Do I understand that those names ending in "una" or "cuna" would indicate a coat similar to the alpacuna overcoat?

A. That is right.

Q. Are you familiar with the term vicuna as used commercially?

A. No.

Q. What does that word mean to your mind?

A. Vicuna is a fabric name or an animal's name.

Q. Do you know a cloth known as vicuna cloth or a finish?

A. I know several of them.

Q. What are they?

A. There is outing flannel with a vicuna finish.

Q. What is the vicuna finish?

A. It represents a fabric made out of any raw material.

Q. Does it have anything to do with the hair of the South American animal of that name?

A. No.

Q. What does it look like, that vicuna finish?

A. Vicuna finish looks like a velvet or a cloth, made out of animal fibre, or it looks like a beaver which is also a fabric term; anything that is very soft and napped.

Q. Is it necessarily made of any particular kind of fabric or content?

A. It can be made out of cotton, out of fine wool, out of acetate, or out of rayon; or any of the new commercial fibres on the market.

Q. You refer to beaver; is there a finish called beaver?

A. That is an overcoating fabric.

Q. Does that have anything to do with the skin of the animal that digs dams?

A. Nothing whatsoever.

Q. Is that a well known term?

A. Very well known; anybody here in the trade can tell you that.

Q. What is it made of?

A. Either all wool or made out of a combination of cotton or wool.

Q. There is no beaver fur, not at all?

A. No, definitely not.

Q. Are you familiar with the practice of selling an overcoat or other garment under different trade names to different customers?

A. Yes.

Q. Is that a common trade practice?

A. I travel from coast to coast twice a year and I pretty frequently work with some of the largest retailers in the country to promote our fabrics, and that is a common practice; in fact, it is not only an American practice but an international practice.

Q. Is that so? You mean the same garment would be sold under two different names and more?

A. Yes. I can tell you additional facts about this being done in Chicago. The retailers who buy the goods, I am familiar with what they have because it is my job.

Q. Is it also the case that a trade name such as alpacuna might be used on several kinds of garments which are sold under that trade name?

A. Yes.

Q. Would you expect Mr. Siegel, for instance, to sell several kinds of garments under the name Alpacuna?

A. Yes.

Q. Is that a common practice? 

A. Yes. We make them, we make different fabrics for different manufacturers and know it is done.

Q. It is sold under the same name?

A. Yes. We make woven goods and knit goods which sell under the same name.

Q. That is a common practice?

A. Yes.

Q. What does the phrase, "There is only one Alpacuna," mean to your mind?

A. The same as I heard awhile ago, like Kodak; Kodak has to be manufactured by Eastman, there is only one Kodak.

TRIAL EXAMINER REARDON: He controls the name?

THE WITNESS: Yes.

By MR. McCracken:

Q. There are many people that can make fabrics, but only one concern that can use the name Kodak which is a trade name that belongs to Eastman?

A. Yes. I can cite another manufacturer of photographic materials, Leica camera everybody today in America knows what a Leica camera is, and it is not the name of the manufacturer.

Q. I gather from that your answer to the question, "There is only one alpacuna," would mean there is only one garment carrying that name and it is made by the Siegel Company; is that it?

A. There is a line of overcoats that carries that name.

Q. Nobody but Siegel can make it?

A. Yes, it is just a trade mark, registered.

Q. Are you familiar with the growth of the cotton back in overcoat fabrics in recent years?

A. When they began that, the fabrics were first made of all wool, knitted fibres, when they came into the trend. Due to the extraordinarily heavy weight and due to following the law of nature the cotton back in a new fabric was developed to appeal to the law of nature.

Q. What do you mean by that?

A. Hair does not grow on raw flesh, hair grows on skin, on the skin of the sheep, and other animals, which provide for extra warmth and lighter weight.

Q. Then I take it the cotton backer is the substitute for the animal skin?

A. That is right.

Q. And the hair on the outside?

A. That is what it was intended for in the construction.

Q. How long has that been going on, how many years?

A. I would say about eight or nine years commercial.

cially and about twelve years in the experimental stage; I mean there were two or three years spent in experiments.

Q. Was the Siegel Company one of the first—

A. To my knowledge they were the first to exploit it commercially.

Q. Has it been a popular selling garment?

A. I can quote that today sixty-five per cent. of the entire overcoat cloths sold in the United States is made of fabric similar to the fabric used by the House of Siegel.

Q. Does it in any way surprise you to find a top coat made without the cotton back and sold under the same name, alpacuna?

A. The top coat is a lighter coat and the cotton back is taken off; the contents are still exactly the same. We make the cloth.

Q. The hair content or wool content if I understand you correctly is precisely the same in the two garments except one has a cotton back and the other has not?

A. I will say the content in the knit fabric is superior to the content in the woven cloth.

Q. Which is the woven cloth, the top coat?

A. Yes, the top coat.

Q. Is it the same, does it come from the same source?

A. The same mixture, approximately, more or less.

Q. I forgot to ask you a few questions about your experience before you began this manufacturing which I think you said was thirty-five years ago. What, if any study did you make of the textile business?

A. After I left college I took a textile course in a graduate school in Europe.

Q. In which one?

A. La Chappelle. Aix-la-Chappelle.

Q. How long were you there?

A. Four years, and I also worked during these years in the mill where all kinds of fibres were manufactured for exportation as well as home consumption.

Q. You are familiar with the construction of textile fabrics, not only from practical experience, but from actual study?

A. I majored in fibres.

Q. Have you contributed to the literature on the subject at all?

A. Within our own organization only; I have not supplied anything to schools, but I have lectured on it.

Q. Can you tell us whether or not the hair of the South American Vicuña, the small cameloid mammal is commercially used?

A. No, it is not commercially used, because the fibre at the present time for the last several months is prohibited for export.

Q. That fabric is very rare?

A. Yes, it is.

Q. You cannot get it now at all; is that correct?

A. No.

Q. When used, is it a durable fibre?

A. No, it is very perishable.

Q. Therefore, it is something that is extremely luxurious and fancy?

A. It is really to be considered a luxury altogether, even the fibre.

Q. Can you imagine anyone knowing this coat was sold for forty dollars expecting to find any vicuña hair in it?

A. No.

MR. McCracken: Cross-examine.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By MR. WILLIAMS:

Q. You do not know anything about the public's understanding of that word vicuña, do you? You are in the

manufacturing business, you do not know what the public understands with reference to that?

A. I do know of the public's acceptance of products in our line.

Q. I said about vicuna; you do not know anything about the public's understanding, whether they are as well informed as you or not?

A. I do know about the public's acceptance.

Q. I am talking about vicuna. You do not know anything about the public's understanding of the word vicuna, what it means to quality and all that?

A. I know the public don't know a damn thing about it.

Q. From where do you gather that?

A. From research.

Q. From research?

A. Yes.

Q. Don't you know as a matter of fact that right out here at the World's Fair in New York for two years there have been two vicunas on exhibition?

A. How do you know they are vicunas?

Q. They are labeled that.

A. They are labeled and you believe it.

Q. The public knows there is some animal named vicuna?

A. Do you believe just because it is so labeled that it is a vicuna?

Q. The public is familiar with the name, the public is becoming familiar with that name.

A. I beg your pardon. You say the animal is labeled Vicuna at the Fair?

Q. Yes. Therefore the public has come in contact lately with that name right here in the last couple of years.

A. I thought you were talking about an animal.

Q. There are two animals out there in Frank Buck's Exhibit and they are labeled Vicuna; two of them, at least.

A. Yes.

Q. Well, that gives the public some understanding in contact with an animal supposed to be Vicuna?

A. That is to be expected.

Q. Therefore, they are familiar with the name, then. You indicated awhile ago the public does not know anything about it.

A. No, they do not. Few people who look at those animals if questioned afterwards would not know what Vicuna stands for at all. That is a matter of conjecture.

Q. You are putting very little valuation on the American intelligence?

A. No; I have great respect for the American intelligence. In Europe they do not know anything at all about Vicuna. They only know it is a finish.

Q. We will confine ourselves now to America.

A. Yes.

Q. There was a manufacturer here only recently who put out quite a number of those vicuna coats.

A. How many?

Q. Quite a few, the Stroock Company.

A. What do you call quite a few?

Q. And they advertised them generally.

A. What would you call quite a few? I happen to know how many coats can be made from the quantity available.

Q. In the last five or six years.

A. You must know what you are talking about when you say quite a few.

Q. They have been advertised very extensively. Stroock has advertised that extensively?

A. Not extensively. He writes letters to a few people.

Q. His pamphlets have been given out pretty generally throughout the country and are in the Public Libraries?

A. Oh, yes.

Q. Then the word vicuna has come into public notice quite widely?

A. I am not sure.

Q. You know the libraries and the schools have them in New York City?

A. Yes.

Q. Why then, do you say you do not think the public has come in contact with it?

A. Because it has never been taught.

Q. From where did you derive the word Velgora?

A. It sounds sonorous, that is why most of these names are adopted, they are easily remembered.

Q. Is that the only reason?

A. That is the reason most trade marks are adopted.

Q. The "gora" does not mean anything in the Velgora?

A. No.

Q. It has no significance in relation to any animal at all?

A. No, because when a manufacturer uses a certain fibre in a cloth we call it either angora or alpaca or camel's hair. We put it on.

Q. Part of that word Velgora is derived or identified with the word angora, is it not?

A. Not at all; "gora" has no relation to angora.

Q. You did not have that possibly in mind when you put that on there?

A. We would not do anything like that.

Q. When you fabricated that word "Velgora" did you have anything in mind connected with the Angora goat whatsoever?

A. We do not fabricate names; the manufacturer who uses our cloth puts the name on it.

Q. You do not do that?

A. No.

Q. That means nothing to you at all, that "gora" on there?

A. No. I made it a point of study in arriving at this statement. As I told you before I travelled from coast

to coast. I do some research work also in order to produce the right article that people want.

Q. You say alpacuna does not indicate anything to you?

A. No.

Q. Some gentleman said it did mean alpaca; it does not mean that to you?

A. No.

Q. You are speaking as a matter of fact as not having any knowledge of the public understanding of those words?

A. I speak as a manufacturer and as a distributor.

Q. Which goes to the—

A. (Interposing) To the ultimate consumer.

Q. You have ultimate consumer contact, do you?

A. Yes.

Q. In what way?

A. Through retail stores.

Q. You do not have contact with customers?

A. Suppose I tell you I am on the road and having nothing to do on a Saturday afternoon I stay in the store and hear them sell goods over the counter: is that consumer contact? Would you call that consumer contact for research purposes?

Q. Possibly it may not mean anything at all; it does not mean anything at all, your simply staying in the store.

A. It means a lot to me.

Q. You are still willing to say with your knowledge of these animals that the word Alpacuna has no significance whatsoever with regard to the fibre content of the article?

A. No.

Q. You speak about Kodaks. You do not know whether the materials that make up these various Kodaks are the same except that there may be a difference in the workmanship, one may be of finer workmanship than the other?

A. I think I do, because that is my hobby, photography.

Q. Do you know that the materials are totally different?

A. Yes, I do.

Q. In the Kodak?

A. Yes.

Q. Or is it finer workmanship?

A. Not only workmanship, but the lens and the trimmings, and so forth.

Q. Do you mean they are all of different materials?

A. In the different sizes, different materials, sure.

Q. What are they? Will you classify them?

A. Some are made out of composition fibre board; others are made out of wood; others are made out of leather; others are made of aluminum; others are made out of very fine imported crocodile skins, and they are all different. The luxury items in a Kodak I would say would amount to over one hundred dollars.

Q. What differentiates the Kodak from another camera?

A. The trade mark Kodak stands for the Eastman camera.

Q. It does not mean anything as far as signifying one particular type of article; is it just a generic term?

A. Just like this coat, if you wish to call it that way.

Q. It does not mean anything at all other than just the name of a camera?

A. Of a camera.

Q. The public does not know what it is buying when it buys a Kodak?

A. No, they think a Kodak is just a camera.

Q. They naturally think it is just one type of thing?

A. I am the general public.

Q. You are not the general public, you are much above the general public.

A. I do not know whether or not this is to be considered as a compliment.

Q. Kodak does not have any significance at all; when you say "Kodak" the public does not get any idea of what that means as far as that article is concerned?

A. May I ask you a question?

Q. I am asking you a question.

A. May I ask you a question before you ask me a question? I want to know what this has to do with the overcoat?

Q. The opposing side interjected it, I did not.

A. That is what I want to know. I do not see what it has to do with this case at all.

MR. WILLIAMS: I agree with you.

MR. McCracken: The question was asked as to whether or not Kodak was a trade name belonging to the Eastman Kodak Company.

THE WITNESS: The whole world knows that.

MR. McCracken: Therefore, the question was asked whether or not when one bought a Kodak he was certain he was buying an Eastman product and, therefore, could not buy a Kodak from anybody but Eastman?

THE WITNESS: That is correct.

By MR. WILLIAMS:

Q. Do I understand you to say you think it is perfectly proper to sell two coats, one a top coat and the other an overcoat, the overcoat having thirty-three per cent. cotton in it, under the same name, which is a trade mark. I am not speaking about Brand names such as Society?

A. Yes, it is perfectly proper. It is done by everybody.

Q. Is there any way for the people to tell he is not getting a wool coat when he believes he is buying a wool coat?

A. Sure.

Q. How?

A. Outside.

Q. Outside?

A. Outside, he can tell.

Q. He does not see the garment, it is completely covered with a lining; in this case it is completely covered with a lining and you cannot see a bit of the reverse side of the cloth. How can he tell?

A. He can open the lining.

Q. There is no way to tell except in some way to cut into the coat?

A. He can open the lining.

Q. He cannot do it from an ordinary examination?

A. From ordinary examination, no.

Q. The two coats are the same as far as the public is concerned from ordinary examination?

A. Yes.

MR. WILLIAMS: All right.

TRIAL EXAMINER REARDON: Re-direct-examination.

Re-direct-examination.

By MR. McCracken:

Q. One is very much heavier than the other?

A. The overcoat. We have talked about this before.

Q. In other words, when Judge Williams asked you whether the two coats were the same from ordinary examination if you had the top coat in your right hand and the overcoat in your left hand you would know there was something in the overcoat not in the top coat?

A. That is why we put the cotton back in, to make the overcoat heavier to respond to severe cold.

MR. McCracken: Very well.

TRIAL EXAMINER REARDON: Re-cross-examination.

Re-cross-examination.

By MR. WILLIAMS:

Q. That would be like putting on heavier underwear or heavier clothing, you would have more weight?

A. A heavier fabric would not do any harm at all.

Q. I am talking about weight. You take the weight of one and the weight of the other—

A. The top coat is lighter than the overcoat.

Q. It would not indicate what the construction was of the material, it would simply be a heavier cloth.

A. An overcoat is not called a top coat; an overcoat is called an overcoat.

Q. The fact it had a greater weight would not indicate what the contents was, would it, alone?

A. The greater weight.

Q. As I say, it would be a heavier cloth.

A. No, sir.

Q. It would not indicate it had cotton in it?

A. It may.

Q. Not necessarily, though?

A. It may indicate it has cotton in it. I witnessed the testimony of advertising where it was stated in the advertisement it has cotton in it.

Q. Suppose two coats were put out here, one an overcoat with a lining all over the overcoat; you could not tell what the content of it is?

A. I could tell it was cotton on the face. If you have a coat I will show you what I mean on the face.

Q. They say it is covered completely and cannot be done. The evidence is, Mr. Schneider, the cotton is completely covered and you cannot tell there is cotton in the coat except by opening the lining?

A. It is not that way to me.

MR. WILLIAMS: That is all.

TRIAL EXAMINER REARDON: Re-direct-examination.

Re-direct-examination.

By MR. McCracken:

Q. When you say you can show it right on the face you mean you can pull apart the hairs of the fibre on the outside of the coat and see the cotton back exactly as you can pull the doll's hair apart and see the skin?

A. Yes.

Q. When you mention the difference between a knitted garment and a woven garment, saying the top coat was woven and the overcoat was knitted, anyone looking at the cloth could see the difference between the two garments?

A. Yes.

Q. Without ripping out the lining or taking it apart?

A. Yes.

Q. You can distinguish one from the other, the one being woven and the other knitted.

A. Yes.

MR. WILLIAMS: One is knitted and the other, woven; is there a totally different appearance in the coat?

THE WITNESS: Not necessarily.

MR. WILLIAMS: That is all.

MR. McCracken: All right. Thank you, Mr. Schneider.

TRIAL EXAMINER REARDON: The witness is excused.

• • • • (N. T. p. 868.)

J. FRANK ARMITAGE was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Please state your name for the record?

A. J. Frank Armitage.

Q. What is your address, Mr. Armitage?

A. 51 Madison Avenue, New York, New York.

Q. You are a partner of the last witness, Mr. Schneider, are you?

A. Yes, sir.

Q. How long have you been in the clothing business, the textile goods business?

A. Thirty years.

Q. What was your experience, education and training for this work?

A. After leaving school I attended Technical College, Bradford, England. Then I came to America.

Q. You are an Englishman by birth?

A. Yes; and then for fifteen years I was associated with various mills, the mills proper, and then fourteen years ago I came along to New York to be in the active selling and the distribution of fibres to the clothing trade: both suitings, top coatings; and overcoating.

Q. You have made a study then for that many years of various types of fabrics?

A. Yes, sir.

Q. Such as those described in this case?

A. Such as woven and knitted.

Q. Are you familiar with the term alpacuna?

A. Yes, sir.

Q. What does the word signify to you?

A. A trade mark.

Q. A trade mark for whom?

A. For Jacob Siegel Company.

Q. Does it signify anything else?

A. No, sir.

Q. In your mind have you ever attempted to break-down the word, or define how it was coined?

A. No.

Q. Are you familiar with a number of other trade marks ending in the word or beginning with the word "cuna" which list is in evidence as Commission's Exhibits 38-A, B, and C?

A. Yes.

Q. What do those words mean to you?

A. Just coined names.

Q. I notice that many of them end in the three letters "una" or some letters "cuna" or "kuna?"

A. Yes.

Q. Is there any significance in that?

A. No.

Q. Does that suffix mean anything to you as to the type of fabric?

MR. WILLIAMS: I object to that. He said it does not have any significance.

MR. McCracken: The second question was, "Does that suffix mean anything to you as to the type of fabric?"

MR. WILLIAMS: I object to it. He already said it has no meaning whatever.

TRIAL EXAMINER REARDON: It will be considered as repetitious. The objection is overruled.

THE WITNESS: Will you ask the question again?

By MR. McCracken:

Q. Does the fact that a name, any of these trade names, and in "cuna" or "una" mean anything in your mind as to the kind of fabric that is in it?

A. No.

Q. Are you familiar with the development of the cotton backed suit or overcoat?

A. Yes, sir.

Q. Do you manufacture some?

A. We do.

Q. How long has that development been going on actively?

A. To my knowledge since 1928. That will be about twelve years.

Q. Commercially that long?

A. Yes. Cotton backs, no.

Q. Commercially about how long?

A. I would say about nine or ten years.

Q. Has it met with popular favor?

A. Tremendous.

Q. What is the particular advantage from the manufacturer's standpoint of the cotton back?

A. Being in the technical end of the business of course I am familiar with the construction and the development of this cloth.

Q. Tell us about it.

A. When it was first introduced they, which is the manufacturers that made up the knitting mills, they first tried it as an all wool; that is, an all animal fibre fabric. As I say animal fibre on the face and also on the back, and it did not turn out satisfactory, it spread, and they could not get a proper finish on the cloth. It could not be tailored. It was really for manufacturing purposes in volume unsatisfactory, so the idea was conceived to buy some more, some fibre or yarn that would not spread and cotton was adopted.

The experiments have developed to such a point now that the cloth is really useful. We in the weaving field cannot match this cloth for color on the face, or durability, and therefore, in my opinion it is a cloth that will always remain with us for the chief reason that it has given satisfactory service and has consumer acceptance.

Q. Does it lose anything in warmth by having the cotton backing?

A. No, none at all.

Q. Are you familiar with the term vicuna?

A. Yes, sir.

Q. What does it mean to you?

A. Well, principally before I came to this country, or before I got very far in the textile business vicuna to me meant fabrics that were—well, one fabric that I had seen in England, and that was a cotton mix, a piece of goods with a nice nap finish.

My next association was, I was still in the mill, we had to manufacture a piece of cotton cloth with a nap which was called a vicuna cloth which was manufactured by the prisoners, by the prisoners in the State Penitentiary, and how I happened to know about it was the man I learned under, he was given this job, it represented a better livelihood for him to manufacture this fabric in the State Penitentiary; then, still going back to England there was an overcoating in the place where I was learning that used to be sold as a Vicuna finish, a woolen cloth made out of all wool, it had a very nice smooth-luster nap; so it was not until three or four years ago I had become familiar with the word vicuna as they are trying to imply now it means an animal.

Q. In other words, for years you heard of the word as applied to a cloth, as applied to wool or cotton or both, but before you knew there was such an animal?

A. That is right.

Q. Was there any of the hair of this animal in the cloth that you saw in England or elsewhere?

A. No.

Q. Is it a common trade name as used to apply to a finish of the type about which you have been speaking?

A. Yes.

Q. Is it a common trade name as applied to a garment made out of the hair of the South American animal; is that commercially used?

A. That is not commercial at all.

Q. Are you familiar with the trade practice to sell the same garment under two separate names?

A. I am, yes.

Q. Is that frequently done?

A. It is.

Q. Is it a common practice?

A. Yes.

Q. Both here and abroad?

A. I do not know so much about abroad because I had just my early training there, but since coming to New York I have found in my experience it is so; I mean in my work as a sales agent I frequently experience such a practice.

Q. Is it also common practice for a manufacturer or retailer with a certain trade name such as alpaca in this case to sell several different garments under that trade name?

A. Yes, sir.

Q. Even though they may be of different construction, all the garments?

A. Yes.

Q. Are you familiar with this advertisement: "There is only one alpaca overcoat."

A. Yes, sir.

Q. What does that mean to your mind?

A. It means to me just a coat manufactured by Jacob Siegel and no one else.

Q. What is a venetian cloth?

MR. WILLIAMS: I object to that. It has nothing to do with the case at all.

MR. McCracken: I wonder if it has. I am going to try to find out.

MR. WILLIAMS: I object to it.

TRIAL EXAMINER REARDON: I do not know why it

is material but I will overrule the objection and see if there is anything that is material in it.

By Mr. McCracken:

Q. I will repeat my question, what is a venetian cloth?

A. The venetian means a weave and a finish. That is all it means.

Q. It does not necessarily come from Venice?

A. No, that is right. I can think of others.

Q. You told us vicuna in your mind meant a finish?

A. That is right. It always has. I come from a line of textile people.

Q. Your father and grandfather were textile people?

A. Yes, for generations our family has been in the business. When you speak of these finishes it is more or less—I have heard my father use these names repeatedly and that is all they mean to me, just a finish. I would like to recall some others, but right now they slip my mind.

Q. Those are accepted trade names as applying to a weave or a finish?

A. Yes.

Q. I think you said vicuna was one of these accepted trade names as applied to a finish?

A. Yes.

Q. Does that apply to the weave or just the finish?

A. Just the finish.

Mr. McCracken: That is all.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By Mr. Williams:

Q. As a person familiar with the animals vicuna and alpaca, do you still want to say that the word "alpaca" has no implication or has any possible indication as to fibre content?

A. That is right.

Q. Is there any implication as to fibre content?

A. No, there is not.

Q. You do not associate "alpa" with alpacuna?

A. No.

Q. Does that prefix mean anything when it is applied to an article of clothing?

A. That was a name coined by Mr. Siegel.

Q. That does not stop it from being an implication as something?

A. When I first heard that name it was a coined name by Mr. Siegel and a type of coat and I did not associate it with anything else. We have our own names. In our own business we manufacture or tailor about twenty different fabrics, and give each of them a certain name if they represent a certain type of fibre.

Q. Do you have any vicuna in your repertoire?

A. I am speaking more or less of woven fibres.

Q. Do you give those names to the products yourself?

A. No.

Q. You said you had names on them?

A. We have our own names.

TRIAL EXAMINER REARDON: May I ask a question.

By TRIAL EXAMINER REARDON:

Q. Did you hear of the trade mark Alpacuna, Mr. Siegel's trade mark, before you knew the identity of the material that was sold under that name?

A. Yes, I heard the name first.

Q. First?

A. Yes.

Q. Then could you naturally at that time have associated any material with it?

A. No, truthfully I did not.

Q. Since you have heard the name and later known the material, what is the material you have known to be in it?

A. The material that is in it?

Q. Yes.

A. That I have never analyzed.

Q. You never had any understanding as to what it was?

A. No. We have our own fabrics.

Q. If you knew there was alpaca in it now, would you associate the name or the material alpacuna with it?

A. No, I would not.

TRIAL EXAMINER REARDON: All right.

THE WITNESS: That is coined words, that do not have any relation at all to the article they are affixed to.

By MR. WILLIAMS:

Q. That is true in some cases: for instance, you say, "Gold Dust" for a scrubbing powder. Even the most ignorant person would not expect to find gold in "Gold Dust."

When you used "alpa" and "cuna" in relation to articles do you expect to find these two fibres in the article? Does it then have a different significance?

A. You asked me if I thought it had any significance. I said, "No."

Q. It does not have any significance at all?

A. No.

MR. WILLIAMS: All right. I have no further questions.

MR. MCCracken: All right.

TRIAL EXAMINER REARDON: I would like to ask the witness one or two questions.

By TRIAL EXAMINER REARDON:

Q. Not knowing the material that was in it, the word

Alpacuna did not indicate alpaca or any other material to you. It was just a trade name?

A. That is right.

Q. Having formed that opinion whether or not you knew what the material was in it afterwards, it did not change your personal opinion of it?

A. No, of course not, no. If I may be permitted I would like to say one thing. I have listened to all the testimony today.

TRIAL EXAMINER REARDON: If there is no objection he may go ahead.

MR. McCracken: Go ahead.

MR. WILLIAMS: I have no desire to hear anything further.

TRIAL EXAMINER REARDON: Let us hear what he has to say—you have asked question concerning light weight and heavy weight. In my opinion any association with the name alpacuna represents a finish. I mean the type of finish applied to a light weight and a heavy weight piece of goods.

MR. WILLIAMS: I will ask you another question.

By MR. WILLIAMS:

Q. The finish is entirely different in the two coats? ○

A. No, it is the same.

Q. I thought you said one was it, and the other was of another type?

A. It does not matter technically you can give the same kind of finish to a woven piece of goods as you can to a knitted piece.

Q. Take these two coats, you could not tell the difference between the two by looking at them?

A. Sure you can.

Q. How can you tell the difference?

A. By the handle of the cloth.

Q. I am saying in appearance it is the same?

A. In appearance?

Q. Yes.

A. Not quite the same thing.

Q. It is not the same?

A. No. Technically it means something which you do not understand.

MR. WILLIAMS: All right.

MR. McCracken: That is all.

TRIAL EXAMINER REARDON: Witness excused.

* * * * * (N. T. p. 881.)

TRIAL EXAMINER REARDON: The hearing will come to order after recess.

The offer is made by counsel for the Respondent to introduce Respondent's Exhibits 40 for identification and 41-A to 41-Z—184 for identification.

Objection is made by counsel for the Commission.

The objection is overruled and Respondent's Exhibits 40 for identification and 41-A to 41-Z — 184 for identification may be marked in evidence as Respondent's Exhibits 40 and 41-A to 41-Z — 184 inclusive.

(The paper referred to, heretofore marked for identification "Respondent's Exhibit 40" was received in evidence.)

(The papers referred to, heretofore marked for identification "Respondent's Exhibit 41-A to 41-Z — 184" was received in evidence.)

MR. WILLIAMS: I move that Respondent's Exhibits 40 and 41-A to 41-Z — 184 inclusive be stricken out for reasons heretofore stated.

MR. McCracken: Will you hear me on that, sir, for a moment?

TRIAL EXAMINER REARDON: Yes.

MR. McCracken: These were offered in evidence as not self-sustaining documents or substitutes for living witnesses which I thoroughly understand they cannot be, but as supporting data for the testimony of the witness Berg, who personally made a survey, and investigation of the entire subject matter of the entire controversy before us, and merely produced these as supporting his conclusions. His conclusions were given and received in evidence without objection. I merely offer these as supporting data.

MR. WILLIAMS: I object to his conclusions. They are wholly without basis as I understand it. You raised that very question, if you remember. You will remember you raised that very question about impressions.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

MR. McCracken: The conclusions which he gave to which I refer were his own conclusions which were that this name meant nothing but a trade name and it did not signify the content about alpaca and vicuna, and he himself testified in order to assure himself that his conclusion was sound he questioned about two hundred and fifty people to see whether they would arrive at the same conclusion.

His conclusions, you did not and could not object to.

MR. WILLIAMS: I object to his statement as to what he found because that statement is not well founded. I do object to his conclusions. I object to the statements because you would not allow them to go in in our case.

MR. McCracken: You did not object to his own personal views on the subject. He has testified that his own personal view is alpacuna did not mean anything but a trade name. Then he said he would support his personal view by a certain survey he made.

MR. WILLIAMS: That is not substantive testimony at all.

MR. McCracken: I put it in as supporting data.

MR. WILLIAMS: I object to that.

TRIAL EXAMINER REARDON: I think I will have to grant the motion.

MR. McCracken: Exception.

TRIAL EXAMINER REARDON: It is granted on the basis or on the same grounds as an expert being called who has made a study of the matter and in the course of the study he has consulted various authorities, technical authorities or other authorities and on whatever matters he has testified he give his own opinion, but he is not allowed to give any of the other data because we are not in the position to or cannot cross-examine on it. That is the reason.

At the same time, you can bring the matter up before the Commission. We have had them marked.

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

The advertisement of Gimbel Brothers on page 10 of the Evening Bulletin of Philadelphia, the issue of November 14, 1939, with particular reference to the advertisement of exclusive alpacuna overcoats, forty dollars which is Commission's Exhibit 113 for identification is offered in evidence. No objection be-

ing made that advertisement with particular reference to the portion of Gimbel's advertisement there referred to may be received and marked in evidence as Commission's Exhibit 113.

(The advertisement referred to, heretofore marked for identification "Commission's Exhibit 113" was received in evidence.)

* * * * (N. T. p. 885.)

J. RUSSELL GROFF was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Mr. Groff, where do you live?

A. I live in Germantown.

Q. And your business is what?

A. Clothing business, retail.

Q. What company?

A. Jackson & Moyer.

Q. Philadelphia?

A. That is right.

Q. And what is your position with that firm?

A. I am the vice-president in charge of the clothing department.

Q. Now, Mr. Groff, in the course of your business is it part of your duty to purchase garments for the firm?

A. That is right.

Q. And in so doing is it part of your duty to know the names and character of clothing in the industry?

A. Yes, sir.

Q. Are you familiar with an overcoat and a topcoat that are sold under the name of "Alpacuna"?

A. I am.

Q. Do you know by whom they are manufactured?

A. They are manufactured by Jacob Siegel.

Q. How long have you been familiar with that overcoat?

A. Probably since it has been originated, quite a few years.

Q. Does your company sell them?

A. No.

Q. Are you familiar with the use of trade names and trade-marks as applied to clothing?

A. I am.

Q. I will ask you what, to your mind, based upon your knowledge of trade names and trademarks, the word "Alpacuna", as applied to an overcoat or a topcoat, signifies?

A. Well, I would say it was one of those hundreds of names that are coined by clothing manufacturers or retailers to be used on a soft hair cloth for overcoating.

Q. Does it signify any more than that?

A. I would not say so, no.

Q. Does it attach to your mind any thought as to how it was made up, how the name was made up?

A. No, I would not say so.

Q. Now, you do know, do you not, that that name is applied to both an overcoat and a top coat?

A. I do know that.

Q. I ask you whether it is the custom in the trade when a manufacturer has obtained a trademark or trade name for him to apply it to more than one garment made by him?

A. Quite customary.

Q. Would that practice not be unusual for the same name to be applied to both an overcoat and a topcoat?

A. That is quite common.

Q. Have you seen the slogan with which Mr. Siegel advertises, "There is only one Alpacuna"?

A. I have seen it.

Q. What does that mean to your mind?

A. That means that there is only one name like that, I assume.

Q. Do you know an animal called the vicuna?

A. Yes.

Q. What is it?

A. It is a goat, a South American goat.

Q. Do you know anything about its cloth, the cloth that is made from its fleece?

A. Yes.

Q. How common is that in the United States?

A. How common?

Q. Yes; in the United States.

A. It is rather rare.

Q. Now, do you know whether or not that same word "vicuna" has been applied to a cloth in which the hair of this particular animal is not incorporated?

A. Yes. "Vicuna" does not necessarily mean the goat.

Q. What does it mean?

A. It means other cloths that have a similar finish.

Q. And what is that finish?

A. Soft, fleecy luxurious finish.

Q. Do you happen to know that the Alpacuna overcoat has a cotton backing?

A. Yes.

Q. Do you know whether or not that is a type of backing of overcoats that is now in common use?

A. Yes.

Q. How long has it been in common use, to your knowledge?

A. I should say five to eight years. I am not sure of it now.

Q. Excuse me.

Do you happen to know that this same garment which you have just described as the Siegel Company Alpacuna overcoat is sold to various retail stores under another name?

A. Yes, it is.

Q. What other name?

A. I can't think of the other name offhand, but I know it is sold in towns that have two different merchants, and they use two different names.

Q. But it is exactly the same garment?

A. It is exactly the same garment.

Q. Is it unusual to do that?

A. It is quite customary in our business.

Q. Can you give an example of that?

A. Yes, I can give you an example of a number of manufacturers: Hickey Freeman, who use another name "Walter Morton".

Q. For the same garment?

A. For the same garment.

MR. McCracken: Cross-examine.

Cross-examination.

By MR. WILLIAMS:

Q. Mr. Groff, you say you are very familiar with the Siegel Company overcoat.

A. I have looked at it over a number of years.

Q. Yes. I say you have been familiar with it all down the line.

A. That is right.

Q. And, therefore, when you are asked as to whether or not the name implies anything so far as the fibre content is concerned, naturally your mind as it runs on that subject goes back, as a matter of fact, for all those years.

A. That is right.

Q. So somebody who was not so familiar with it as you are might draw conclusions from the trademark, mightn't he very well?

A. That is possible.

Q. What is that?

A. That is possible.

Q. Now, you say that legend I believe on their medal, and also on their label, "There is only one Alpacuna coat", means there is only one of that name. Only one coat of that name is what you say, is it?

A. Only one overcoat with that name? I would not say necessarily that, no.

Q. Well, they have a legend that says, "There is only one Alpacuna coat".

A. Yes.

Q. Just what did you say that would imply, reasonably, from that language and your knowledge of the coat?

A. I would say that no one else has the coat called the Alpacuna.

Q. Yes. However, when it says there is only one Alpacuna coat, as a matter of fact there are two Alpacuna coats, aren't there?

A. Yes; that is right.

Q. Then you think that legend is equally applicable to both types of coats?

A. But they are both overcoatings.

Q. But it is not one coat. I do not mean in the sense of being one coat physically, but one type of coat. It is not one type of coat, is it?

A. No. One is a heavy weight and one is a light weight.

Q. What is the construction of the topcoat, the fibre construction?

A. Just a little less fleece, a little less hair, making it a lighter weight.

Q. You mean it is exactly the same coat except the weight?

A. No. It is constructed in a different manner in the back. The overcoat has a cotton back, which adds to its wearing qualities, its durability.

Q. What about the topcoat?

A. The topcoat is without the back.

Q. What fibres are those coats composed of? First the overcoat.

A. First the overcoat. The overcoat is composed of hair fleece and some wool.

Q. I mean the name of the fibre.

A. Well, I will say mostly the alpaca fleece.

Q. Anything else?

A. Wool, and a cotton backing.

Q. When you say "wool", you mean sheep's wool?

A. That is right.

Q. Although the other things are often referred to as wool.

A. That is right.

Q. What else?

A. A cotton back.

Q. So, as I understand it, you think that the overcoat has a cotton backing?

A. Uh-huh.

Q. With an alpaca fibre top.

A. That is right.

Q. That is, the exposed part, the outside part.

A. That is right.

Q. And you think there is some wool in there?

A. There is some wool in there, I believe.

Q. Sheep's wool?

A. That is right.

Q. That is what it is composed of?

A. That is right.

Q. And what about the topcoat?

A. The topcoat is constructed the same way without the cotton backing.

Q. And you think the principal fibres, the fibres in the wool part of the coat, are alpaca and sheep's wool?

A. I would say they were the same.

Q. You say that there is a practice developed which seems in your mind to justify the use of one name when these coats are sold in one store and another name when they are sold in another store?

A. I think it is a very fair practice.

Q. Now, it is your common experience that some people like to deal with certain stores; is that correct?

A. That is right.

Q. They build up a credit with the stores?

A. That is right.

Q. They build up reliance upon the salesman to advise them properly when they ask them about the contents of materials?

A. That is right.

Q. Maybe notifying them of bargains. Is that right?

A. That is true.

Q. Well, do you think it is exactly a fair practice for a person who was to see, for instance, an Alpacuna coat advertised, say, at Kann's Store in Washington—I am not familiar with the local stores to use them as illustrations—and you were a customer of the Young Men's Shop. You saw that coat. Somebody recommended it. And at the same time the Young Men's Shop had that same identical coat under the name of Alperu. Do you think it is a fair custom to give that coat a different name at a different place, which would result in the taking away from a different store a well known customer?

A. Now, I will answer this way: I certainly think it is fair for a manufacturer to sell more than one merchant in a town.

Q. Oh, yes.

A. Naturally, the same product.

Q. I will agree with you on that.

A. To both houses. So I think it is a very fair policy for the manufacturer to assign one name to one house and another name to another house.

Q. It might be fair to the house but is it fair to the customer, in whom a certain store has built up confidence?

A. The customer is getting value received.

Q. That is not the question. The people are entitled to buy wherever they please and what they please.

A. That is true.

Q. In other words, do you think it is fair to your customer that he should be taken off somewhere else by reason of two different names being given to the same coat?

A. I certainly think it is fair.

Q. You do think it is fair to the customer?

A. Yes.

MR. WILLIAMS: I think that is all.

* * * * (N. T. p. 897.)

GEORGE N. DEGERBERG was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Please state your full name for the record.

A. George N. Degerberg.

Q. Mr. Degerberg, where do you live?

A. Merion.

Q. What is your business, sir?

A. Tailor.

Q. Merchant tailor?

A. Merchant tailor.

Q. How long have you been in that business?

A. About 41 years.

Q. You succeeded whom?

A. My father.

Q. He was in the business how long before you?

A. Well, the business was established in 1880.

Q. You manufacture both men's and ladies'—rather, you make both men's and ladies' garments?

A. Yes.

Q. In the course of your business—of course, you are entirely a merchant tailor; you do not buy clothing.

A. No.

Q. In the course of your business you are, are you not, familiar with the types of garments which are sold in the trade, however?

A. Yes. I read the advertisements.

MR. WILLIAMS: Off the record.

(Discussion off the record.)

By MR. McCracken:

Q. You are familiar more or less, are you not, from watching the advertisements and general knowledge of the trade, with the trademarks and trade names as applied to certain clothing?

A. Yes.

Q. Did you ever hear the trade name "Alpacuna"?

A. No, I never have until you spoke to me about it.

Q. You were not familiar with it before?

A. No.

MR. McCracken: Here comes a fresh mind, then.
Mr. Examiner.

By MR. McCracken:

Q. Now that you know that name, if I tell you it applies to an overcoat and a topcoat, what does that name signify to your mind?

A. Nothing but a trade name.

Q. A coined word?

A. A coined word.

Q. Nothing more?

A. Nothing more.

Q. When you know that it is applied to both an overcoat and a topcoat, is there anything unusual or strange to you in the same name owned by the same manufacturer being applied to more than one garment?

A. Only about the weights, that is all. One is heavy; the other is light.

Q. But is or is not the same name applied to more than one garment?

A. Yes.

Q. You heard me ask the last witness a question as to the slogan, "There is only one Alpacuna". What does that slogan mean to you?

A. It means a trade name of the cloth—the garment.

Q. Made by the same manufacturer?

A. Yes, made by the same manufacturer.

Q. Is there anything unusual to your mind in the manufacturer selling the same garment to two merchants under different names?

A. No.

Q. Sir?

A. No.

Q. Is that frequently done?

A. It is frequently done, I believe. Not being in that business I can't say.

Q. Now, are you familiar with the word "vicuna"?

A. Yes.

Q. What does that word mean to your mind?

A. Oh, vicuna is—would be a finish of a cloth.

Q. A finish to a cloth?

A. A finish to a cloth, vicuna finish, yes.

Q. Does that contain any vicuna hair?

A. Not necessarily. It is only a soft finish.

Q. What kind of finish is it?

A. Well, I have a sample, if I may show it to you (producing sample).

MR. McCracken: The witness produces three samples, two in—black, is that?

THE WITNESS: Yes.

MR. McCracken: And one in natural color.

By MR. McCracken:

Q. Will you describe—

MR. McCracken: I guess I better have them marked. Excuse me.

Will you mark them, please.

TRIAL EXAMINER REARDON: Mark them Respondents' Exhibits 42, 43, and 44, for identification.

(The samples were marked for identification "Respondent's Exhibits 42, 43, and 44.")

By MR. McCracken:

Q. Now, Mr. Degerberg, I refer you to Respondent's Exhibit No. 42, for identification, and ask you what it is.

A. Well, this is a vicuna finish cloth. I believe there is no vicuna in it.

Q. Is that a well known name in the trade?

A. It is a well known finish.

Q. You mean the finish to the cloth is well known in the trade?

A. Yes.

Q. In other words, in the trade if someone speaks of vicuna finish cloth anyone in the trade understands what it is?

A. Yes, a soft finish cloth.

Q. And they would all—

A. It comes in different weights.

Q. And they would all understand what it means?

A. Yes.

Q. Now, what is the next?

A. This one here (indicating)?

Q. No. 43, yes.

A. That is practically pure vicuna. I believe there is a little llama's wool in it. That is a light weight. That is our own 12-ounce cloth.

Q. It has vicuna in it?

A. It has some.

Q. It has some?

A. And I believe a little llama wool to give it strength to stand up. It would be a little soft without it.

Q. And the third, No. 44.

MR. WILLIAMS: Excuse me. Has that got a name?

THE WITNESS: No. We call it vicuña.

MR. WILLIAMS: You call it vicuña?

THE WITNESS: Yes.

By MR. McCracken:

Q. And the third, which is No. 44?

A. That is supposed to be a pure vicuña for topcoating.

Q. Made from the hair of the animal?

A. Yes.

Q. So, if I understand you correctly, Exhibit No. 42 is a piece of cloth known as vicuña finish, but having no vicuña hair in it; Exhibit No. 43 is also a piece of cloth known as vicuña finish, but with some vicuña hair in it; and Exhibit No. 44 is a piece of cloth made entirely from vicuña hair.

A. Yes. Of course, Mr. McCracken, that is about as pure as you can get it. There may be a little mixture to give it strength. I am not a manufacturer, you see.

Q. Is or is not the pure vicuña hair a common cloth in the United States?

A. Pure vicuña hair?

Q. I mean cloth made from pure vicuña hair. Is it common or rare?

A. Very rare. I mean, it is a very expensive hair. It is very little used.

Q. In thinking of the word "Alpacuña", which, as you say, you never knew of until yesterday, would it or would it not occur to your mind that a garment bearing that name would have vicuña hair in it?

A. Well, I will put it this way, Mr. McCracken: By cloth—you see, as a rule, they have trade names for cloth

as well, and if anybody would come in and say, "Show me Alpacuna cloth", I would not show him any pure vicuna, or any cloth with vicuna in it.

Q. Any vicuna in it?

A. Yes. It is just the finish, you see.

Q. Mr. Degerberg, something has been said in this case, though not this morning, about the practice of lining an overcoat with silk lining, something of that kind. Is or is not that a common practice in overcoats?

A. Lining?

Q. Yes.

A. Oh, yes.

Q. And that is for what purpose?

A. To make the—to finish them nicely.

Q. Is or is not that done with respect to topcoats?

A. Oh, yes. For instance, I have a topcoat which is lined all the way through with silk.

Q. Now, are there any other cloths that you can give us which bear the name of, perhaps, "camel" or something else, in which the animal's hair does not appear?

A. Chincilla; the doeskin finish; buckskin.

Q. Is there any doeskin hair in the doeskin finish?

A. No.

Q. Is there any chinchilla hair in the chinchilla finish?

A. No.

Q. What is the other?

A. Buckskin finish.

Q. There is no skin of the buck in a buckskin cloth?

A. No.

Q. Any others?

A. Well, suede cloth, as we call it. It is supposed to be a leather finish, but it is either the finish or the weave.

Q. Is it something resembling the animal's skin?

A. No, I would not say so.

Q. Not even that?

A. No. Chinchilla, for instance, has got a little knot in it, you see, like nigger's hair.

Q. Yes.

A. That is not the finish of the animal at all. Doeskin, of course, is a smooth finish cloth.

Q. Those are just fanciful names; are they?

A. That is all.

MR. McCracken: Cross-examine.

Cross-examination.

By MR. WILLIAMS:

Q. Mr. Degerberg, you say that Alpacuna means to you simply a trade name or a coined name for some article?

A. Yes.

Q. And did I understand you to say that you did not gather any implications from trade or coined names when they are applied to articles of wear and apparel?

A. Well, now, I buy the cloth. I do not buy wearing apparel. You see, we do not buy any ready-to-wear things at all.

Q. Then, as I understand it, you are not at all prepared to give any conclusion as to the meaning to be given this trade or coined name?

A. Outside of a cloth. If you tell me to look at a vicuna, I would know it would not be pure vicuna when you showed it to me.

Q. Well, Alpacuna, doesn't that have some implication as to fibre content?

A. Not necessarily.

Q. It doesn't lay itself open to some conclusion as to fibre content?

A. No. I would call it a finish. I will put it that way.

Q. You mean Alpacuna would be called a finish?

A. Well, I would call it a certain finish cloth, yes.

Q. In other words, from that name you would not know if it had any alpaca in it?

A. I, personally, would not, no.

Q. Then that name leaves the public in the position of being able to draw some conclusion, or not able to draw some conclusion, from your viewpoint; is that correct?

A. Well, that would be pretty hard for me to answer.

Q. That word "alpa", the first part of the word, doesn't that mean anything to your mind?

A. Honestly, no.

Q. It doesn't have the slightest meaning to you?

A. Not to me.

Q. Is that because of your familiarity with trade practices, or because of what you draw from the word itself, aside from your knowledge?

A. Well, I would say partly from trade practices.

Q. In other words, you know the trade practice now is to use names that are not clearly indicative; in other words, ambiguous names?

A. I wouldn't say now. It always has been the practice. Just as I told you about the cloths. People come in—salesmen come in and say, "Here is a vicuna". See? Well, I know it is not a pure vicuna.

Q. Yes, I understand; but suppose he said vicuna fabric?

A. It is the finish, you see. That is really what it is.

Q. I thought you drew a distinction between pure vicuna fabric and vicuna cloth.

Suppose a man comes in and says, "This is a vicuna fabric".

A. If he told me it was pure vicuna—

Q. No; if he told you it was vicuna.

A. I would understand it to be the finish.

Q. The finish?

A. Yes.

Q. I thought you said vicuna cloth had vicuna finish.

A. Doeskin—you don't say doeskin cloth; you say

doeskin or buckskin or chinchilla. (They don't say chinchilla cloth; they just say chinchilla. You see? I naturally know what chinchilla is, or doeskin, or buckskin, being familiar with buying it.

Q. But you say there is a true chinchilla to distinguish it from a substitute material.

A. I thought Mr. McCracken asked me if the chinchilla was the same as the animal, you see, and I said "No" to that.

Q. Well, there is a chinchilla coat.

A. A fur coat.

Q. Then I understand you to say that there is also a substitute material for a chinchilla coat.

A. No. I said the fabric they could call chinchilla.

Q. The fabric. You say that you would know from buying the fabric whether it was a true or a substitute fabric, not from the chinchilla itself. You would know that?

A. Chinchilla is only a weave or finish. It is not an animal. You know that. There is an animal, of course, whose fur is used, but I don't know—

Q. I understand there is an animal from which it comes. What is its name?

A. Chinchilla?

Q. Yes.

A. An Australian wool.

Q. But there is also a substitute material of that same name, isn't there?

A. Chinchilla?

Q. It is all made out of the same—

A. You understand chinchilla is a weave, a finish, whatever you want to call it.

Q. Is that all it means?

A. That is all it means.

Q. Is that all the word "chinchilla" means?

A. That is all it means.

TRIAL EXAMINER REARDON: Of course, as I under-

stand, the chinchilla is an animal and you get fur from it; is that right?

THE WITNESS: Well, yes. That is very rare.

By MR. WILLIAMS:

Q. Therefore, that name means two things: It means the fur from the animal, and it also means the fabric that somebody has given the name to; but they are so different, you say, that you can easily tell which is not the chinchilla fibre.

TRIAL EXAMINER REARDON: Well, I understood he testified that when a cloth is called chinchilla it represents a certain thing; that no cloth comes from the chinchilla animal.

THE WITNESS: Yes.

By MR. WILLIAMS:

Q. You would know that but the public wouldn't know that.

A. Chinchilla is pretty common to the public, I would say. I think a lot of men know what a chinchilla coat is; perhaps not the younger generation, but the older generation would know. Chinchilla is a pretty old name for a cloth.

Q. I understand that, but I am just trying to get your reaction to the trade name.

Now, coming back to the subject: You want to say that you think that a person would not be justified—I mean taking the name itself—in drawing any conclusion from that combined or coined name “Alpacuna”?

A. I personally don't think you are going to fool the public at all, because I think the public, very few of them know about the animal vicuna or the alpaca.

Q. But suppose they do know about them? You know that they have brought into New York two of them during the World's Fair.

A. Well, I personally would take it as a trade name.

Q. But that does have an implication, does it? That trade name has an implication as to the animal origin of the fibre?

A. No, I would say not.

Q. You would say not.

Now, you say that the legend "There is only one Alpaca coat" would indicate that there was a difference in weight only in the topcoat and the overcoat: is that right?

A. Yes, that is right.

Q. And do I understand you to say, then, that except for the difference in weight they are supposed to be the same construction?

A. Why, I imagine it would be similar. I wouldn't say the same, no; they can't be the same.

Q. I mean the fibre content would be the same?

A. The fibre is, maybe, the same.

Q. Well, wouldn't you expect the fibre content to be the same?

A. The weight of the cloth is different. It can't be the same.

Q. You mean it can't be the same fibre content. I am not talking about volume; I am talking about the fibre, you see.

A. You see, they put backings on them, cotton backings, to give them strength. They do everything nowadays to fix them up.

Q. Could you really call two coats made of different fibres as being only one coat? Could you really do that?

A. Exactly as talking about chinchilla. There is a heavy weight chinchilla and there is a light weight chinchilla. They are both called chinchilla.

Q. I understand.

A. And vicuña would be the same thing. They come in different weights.

Q. I am not talking about the weight; I am talking about the fibre.

A. Well, they would be the same thing.

Q. They would be the same fibre, but different weights?

A. Yes.

Q. Naturally, if there is a topcoat and an overcoat, there were two coats, one would be heavier than the other, but the fibre would be the same?

A. Yes.

Q. It is just merely a difference, maybe, in the weave.

A. That is right.

Q. But the construction would be the same.

A. That is right.

Q. That is, they are supposed to be the same.

A. They are supposed to be the same.

Q. Now, you speak of a material not made out of vicuna entirely but it is called vicuna cloth. You would not call that vicuna, would you? You would call that vicuna cloth.

A. No; we call it vicuna.

Q. Isn't it called vicuna cloth as distinguished from vicuna?

A. Of course, we never use the word "cloth" in our business. We say chinchilla, or shetland, or beaver, or unfinished worsted.

Q. In other words, that is when you are talking in the trade; but that implies cloth.

A. For instance, when you come in to buy something, I would say "This is worsted". I never mention "cloth". They are all trade names.

Q. I thought I understood you to say that there is a vicuna cloth, which means a smooth finish.

A. It means a smooth finish cloth.

Q. Yes, vicuna cloth. It is not vicuna.

A. This one here (indicating).

Q. Yes; No. 42.

A. That is the finish.

Q. Is that what you call a vicuna cloth?

A. Yes.

MR. McCracken: Now, he has already said that is what he called vicuna.

THE WITNESS: I just told you, vicuna—we call it a finish. You see what I mean?

MR. McCracken: Judge Williams has attempted to put the word "cloth" in his mouth a dozen times.

TRIAL EXAMINER REARDON: I would say perhaps inadvertently.

By MR. WILLIAMS:

Q. Well, you would not want to tell the public it is vicuna, would you? If somebody asked you what that was, you would not simply say vicuna, would you?

A. Yes.

TRIAL EXAMINER REARDON: Referring to Respondent's Exhibit 42.

By MR. WILLIAMS:

Q. And you told me that if I went into your place and asked for vicuna—

A. I would show you that piece of cloth right there (indicating).

TRIAL EXAMINER REARDON: Off the record.

(Discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. Just one more question on that subject and I will leave that particular item:

I understand you to say that if I come to you and say, "I want an article of vicuna, made of vicuna"—I should say made of vicuna, naturally meaning the fibre—you would show me No. 42?

A. Yes.

MR. WILLIAMS: I have no more on that.

MR. McCracken: No more questions?

MR. WILLIAMS: Oh, yes.

MR. McCracken: Will you read that last question and answer, please?

(Last question and answer read.)

By MR. WILLIAMS:

Q. Now, as I understand it, Mr. Degerberg, you are merely speaking for the trade; you are not speaking for the public?

A. I am talking about the trade.

MR. WILLIAMS: That is all, sir.

Re-direct-examination.

By MR. McCracken:

Q. Mr. Degerberg, does anybody ever come in and ask you for a piece of cloth made out of the fibre of any animal?

A. Yes, doeskin, buckskin.

Q. Well, but when they ask for that do they ask you whether it is the skin of the doe or the skin of the buck?

A. No.

Q. Judge Williams just asked you a moment ago whether or not someone would come in and ask for a piece of cloth made out of the fibre of the vicuna. Has that ever happened?

A. No.

Q. When you said you would show them Exhibit 42, did you or did you not mean that you would show them that if they asked you for a piece of cloth made out of the fibre of the vicuna animal?

A. I don't just get that question.

Q. Judge Williams asked you what you would sell them if a customer came in and asked for a piece of cloth made out of the fibre of the vicuna.

A. Yes.

Q. And you said you would show them No. 42. Now, did—

A. Well, not the fibre; if he asked me for vicuna, I would show him that piece of cloth.

Q. Your No. 42.

A. Of course, if he questioned me, "Is that vicuna"? I would say "No" to him.

Q. Yes.

Now, one more question: In the trade when a man has adopted and appropriated a trade name, such as Alpacuna, is it or is it not the custom for him to sell various types of garments under that trade name?

A. I believe they all do.

Q. Whether they are made out of the same yarn or not?

A. That is right.

MR. McCracken: That is all.

Re-cross-examination.

By MR. WILLIAMS:

Q. I asked a long question of the preceding witness, and I hate to go through it again, but I would like to get your reaction to this: Mr. Groff said that it was the custom for people to patronize one store, for any reason that they may have in mind—more confidence in that store than in others, building up credit, or what not. Do you think it is fair to a retail store to give two names in the same town to the same article? To use the illustration that I used before: For instance, Kann's in Washington sells the Alpacuna; the Young Men's Shop sells the Alperu, both being exactly the same coat. And suppose I am a

patron of the Young Men's Shop and somebody tells me about the Alpacuna coat that he bought at Kann's, and I decide to go over there and get one. Do you think it is fair to me to get me away from my store when I could get that same coat in my store?

A. Well, I don't know. If you are used to dealing with one store, you would probably go into that store. It wouldn't make any difference to me—the name wouldn't mean anything particularly to me.

Q. Sir?

A. I say, the name wouldn't mean anything particularly to me.

Q. But the point I am making is this: Here is the same coat under a different name, but a friend of mine takes me down to Kann's because they have a good coat there, and I can get the same coat at the Young Men's Shop under the name Alperu. Is that fair?

A. I would say the manufacturer is protecting both of them.

Q. You mean to say it is fair to compel me to leave the shop that I prefer to deal with, because the coat that I find I want is Alpacuna in another store, through the activity and interest of a friend of mine, that I should be taken away from my store when it is right in my store? Do you think it is fair to the customer?

A. Well, if the customer had any confidence in the store—that's the only thing. The customer does not have any confidence in the store he is dealing with.

Q. I am saying the same coat that is sold in my store, the one that I prefer to deal with, is sold in Kann's store, but I don't know it. My friend says, "I have found a good coat down in Kann's called Alpacuna". And I say, "Yes, I will look it over". And after I have looked it over I say, "I would like to have that coat". If I am going to have the Alpacuna coat, so far as I know, I have got to go to Kann's to get it because it is not in my store, when, as a matter of fact it is in my store under another name. Now, is it fair to the customer?

TRIAL EXAMINER REARDON: To you?

MR. WILLIAMS: To the purchaser.

By MR. WILLIAMS:

Q. Is that fair to me as a customer?

You hesitate, sir. Why do you hesitate?

A. Because to me it is the sort of a question that is pretty hard to answer.

Q. It is pretty hard to answer. You would feel some people were imposed on?

A. No, I don't think so.

Q. Why is it hard to answer?

A. I mean the trade name. You may have a trade name at another place. I wouldn't be able to answer.

TRIAL EXAMINER REARDON: In other words, if the coat was under one name at one place and under a different name at another place the customer could not lose, could he?

THE WITNESS: No.

MR. WILLIAMS: But that is not the question. I say I have a right to exercise my caprices and my idiosyncrasies, and I should be permitted to purchase where I choose.

By MR. WILLIAMS:

Q. Suppose there is one store where I am dealing, the Young Men's Shop. I have built up credit there. I get notices of advance sales, and what not. I want to stay there and deal there always. And a friend of mine says, "I have found a coat down at Kann's. I think it is a fine coat. You ought to try it." And I go down there and look at it and buy it. Yet I could have bought that same identical coat in my store; but by reason of the name I have been taken to another store away from my people. Is that fair?

A. Well, the buyers in both stores know it.

TRIAL EXAMINER REARDON: I think the rest of it is argument. I think everything has been brought out.

By MR. WILLIAMS:

Q. You do not feel you want to answer it?

MR. McCracken: He did answer it.

By MR. WILLIAMS:

Q. You say as a customer I have no complaint?

A. No.

Q. You think not. Will you say it out loud? Don't shake your head.

A. Put the question to me again.

Q. You think I as a customer have no complaint by reason of being obliged to leave my own store and go to another store to get what is in my store but under a different name? You think I have no complaint?

A. No.

MR. WILLIAMS: All right, sir.

MR. McCracken: Thank you very much, Mr. Degerberg.

(Witness excused.)

MR. McCracken: I would like to offer Respondents' Exhibits Nos. 42, 43, and 44.

TRIAL EXAMINER REARDON: Mr. Williams, Respondents' Exhibits 42, 43, and 44 have been offered.

(No response.)

TRIAL EXAMINER REARDON: There being no objection, Respondents' Exhibits 42, 43, and 44, for identification, may be marked in evidence.

MR. WILLIAMS: Except for that general objection, I have no specific objection.

MR. McCracken: His general objection to the whole line of testimony.

MR. WILLIAMS: Yes.

(The samples heretofore marked for identification "Respondent's Exhibits 42, 43, and 44," were received in evidence.)

ESTHER COLE RICHARDSON was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Is it Mrs. Cole?

A. It is Mrs. Richardson.

Q. Mrs. Richardson, what is your business?

A. My business is Director of the Consumer Relations Bureau at Gimbel Brothers.

Q. At Philadelphia?

A. Yes.

Q. And what is the Consumer Relations Bureau? Tell us what it is all about, please.

A. Well, my job is solely protecting the consumer, and nothing else. I am hired by the store to be an entirely impartial person, and to maintain and retain the consumer's reaction about everything, the consumer's attitude toward everything, and convey it to the store.

Q. The idea being, I presume, to maintain cordial relations between the consumer and the merchant?

A. Well, they feel this way: If I find out anything that is wrong, it is protecting them against other customers that may find that also.

Q. Yes.

A. For example, if I should go to the store and see anything that is not exactly as it should be—because I am only interested in the consumer, it is my job to tell the firm that I don't like that, and I don't think any other customer would, and it is always corrected, because they are interested in pleasing the consumer.

Q. The consumer is always right.

A. Well, that is their attitude.

And, by the way, it may be interesting to you to know that I have never been employed in any other capacity; that is, I have never bought. I have never sold. I have been in the training department. I was hired because of my knowledge.

Q. You have the viewpoint of a consumer?

A. Because I have been a housewife and a mother, and they thought that was rather important to them, don't you see.

Q. Yes.

Now, in the course of your studies, therefore, do you or do you not familiarize yourself with the trademarks and trade names?

A. Yes, just as the average consumer would. They become familiar with certain things and know what to expect.

Q. Are you familiar with the trade name "Alpacuma," as applied to overcoats?

A. Yes, I am.

Q. It is sold in Gimbel Brothers, is it not?

A. Yes, it is.

Q. What does that trade name mean to your mind?

A. Well, the trade name simply means to me the name of a quality overcoat.

Q. Manufactured by a certain manufacturer?

A. Manufactured by a certain manufacturer.

Q. Does it also apply to a topcoat in your mind?

A. Yes.

Q. And based upon your experience with trademarks

and trade names, is it or is it not a common practice for the same manufacturer who owns the trade name to apply that name to different garments made by him?

A. Oh, yes.

Q. Whether they are made out of the same cloth or not?

A. Yes.

Q. In other words, would or would it not be a common practice, if the Siegel Company started to make suits of clothes, to apply the name "Alpacuma" to those suits of clothes?

A. It is quite right.

Q. Now, are you familiar with the slogan in the advertising "There is only one Alpacuma"?

A. Yes.

Q. What does that mean to your mind?

A. There is only one overcoat of this particular type made by this particular firm.

Q. Yes.

That would mean, would it not, that nobody else can make that overcoat?

A. Well, I would assume so, yes.

TRIAL EXAMINER REARDON: They can not use that name.

THE WITNESS: Yes.

MR. McCracken: Yes, I meant under that name.

THE WITNESS: Under that name, yes.

By MR. McCracken:

Q. Would it mean, however, that the same manufacturer would not make a topcoat under that name?

A. No. No. It is his name. If he wants to make anything he wants to, I would assume he could. I am only familiar with an overcoat and a topcoat.

Q. Are you familiar with the term "vicuna"?

A. I never heard it. I knew there was such an animal, but it is so rare—it is one of those things you read about in the dictionary. In my experience I have never seen anything made from it, or heard of it.

Q. Did you hear Mr. Degerberg on the stand just now?

A. Yes.

Q. You heard him describe a finish called vicuna?

A. Yes, I did.

Q. Are you familiar with that?

A. No, I am not. It's strange. I have seen many materials, but I don't happen to be familiar with that one.

Q. Now, how long have you been in this department, may I ask?

A. Oh, six years.

Q. Six years?

A. Yes.

Q. During that entire time has the Alpacuna overcoat been sold in Gimbel Brothers?

A. Oh, yes.

Q. Have you ever had a complaint about the use of that name?

A. Never.

Q. And you are the complaint center, are you?

A. I am—and I am a terror—I am supposed to be, because it is when I am complaining that I am pleasing the boss, if you know what I mean.

Q. If it came to anyone, it would come to you?

A. Yes, because I would be slipping if I did not find it first, you see.

Q. Yes.

You, of course, know the difference between an overcoat and a topcoat?

A. Yes.

Q. What is the difference?

A. Well, an overcoat is one that is heavy and warm. The topcoat is a lighter garment. I don't know if my description is one that a tailor would give.

Q. It is a very good description.

A. It is obviously a different garment.

Q. And would you or would you not expect them to be differently constructed?

A. Oh, yes, indeed.

Q. And would you be surprised if an overcoat bearing the same name as a topcoat had in it, for example, a cotton back?

MR. WILLIAMS: Now, I really think that is suggestive. However—

MR. McCracken: Well, we have been indulging each other.

MR. WILLIAMS: All right.

By MR. McCracken:

Q. Would you be surprised to find that the overcoat had a cotton backing and the topcoat did not?

A. No. The construction would be different; however. I would certainly expect them to be different.

Q. Even though they bore the same name?

A. Yes. That is the trade name.

TRIAL EXAMINER REARDON: Mrs. Richardson, do you know whether or not—speaking of topcoats, for instance, do you know whether some topcoats have a lining and some do not have a lining?

THE WITNESS: I have seen very lightweight topcoats with linings and just half linings, yes.

TRIAL EXAMINER REARDON: And others also made without linings?

THE WITNESS: Oh, no. I don't think any of them were made without a lining of some kind. No.

TRIAL EXAMINER REARDON: Well, take a man's ordinary coat, a jacket. Have you seen those without a lining?

THE WITNESS: Jackets? Well, I have seen jackets made with just the sleeves lined, and just a little top yoke in the lining. I have seen those, yes.

TRIAL EXAMINER REARDON: If you saw a topcoat with a half lining, or practically no lining, and another with full lining, and they are both made out of wool, if anybody asked you to describe those coats would you refer to the lining at all? What would you say about the coats?

THE WITNESS: I think it is possible that you would. You would say that—I would consider that perhaps in a topcoat made of wool it is a question of style, perhaps a style element. I wouldn't know the reason for having one. If I were describing it, I would say they look identically on the outside, but one had a half lining, which some men prefer.

TRIAL EXAMINER REARDON: Take a person coming into a store. He has not heard our discussion at all. He says, "What is this?" Well, you might know what it is made of. One is made of wool, for instance. And you might say, "This is a wool topcoat." That was the half lined coat. And suppose he turned to the other one and asked what that is. "Why," you might say, "that is a wool topcoat, too. It is all lined." You would call them both wool topcoats, would you?

THE WITNESS: Oh, yes, indeed. They are both wool topcoats.

TRIAL EXAMINER REARDON: Suppose one coat is made with a backing and the other without a backing. How would you describe them? Would you refer to the backing?

THE WITNESS: Oh, very likely. Very likely.

TRIAL EXAMINER REARDON: Now, if a person came

in and put his hand on this coat and said, "What is that?" and then he put his hand on another topcoat and asked, "What is that?" what would you say?

THE WITNESS: Now, one had a cotton back and the other was all wool? You are not talking about topcoats?

TRIAL EXAMINER REARDON: One is a topcoat and the other is an overcoat.

THE WITNESS: Well, he would say—

TRIAL EXAMINER REARDON: What would you say? He would say, "What is this?" and "What is that?"

THE WITNESS: Well, one would be an overcoat and one would be a topcoat. Is that what you are saying?

TRIAL EXAMINER REARDON: Yes.

THE WITNESS: And one has a backing? The overcoat has a cotton backing?

TRIAL EXAMINER REARDON: Well, I do not remember now whether in this case it has a cotton backing behind the lining or not, so I won't pursue the inquiry any further. I just leave it to counsel.

By MR. McCracken:

Q. Is it the custom, Mrs. Richardson, for the same garment to be sold in two different stores under two different trade names?

A. Yes, sir; it is quite a custom.

Q. So if this overcoat that we are now talking about, that is, the Alpacma overcoat, is sold in Gimbel Brothers as such, while it is sold across the street at Strawbridge and Clothier's under the name "Alperu," would that or would that not be a common custom?

A. Yes, that is a common custom.

Q. Can you give us any other examples from your knowledge of that sort of thing being done by other manufacturers?

A. Oh, there are—hats, I know—well, there are a good many other things that I just can't bring to my tongue. It is the same thing. There is no difference in the quality and usually at exactly the same price.

Q. Have you any knowledge of chinchilla cloth?

A. Have I knowledge of chinchilla cloth?

Q. Yes.

A. Yes, I have.

Q. What is it?

A. Chinchilla cloth is a certain type weave.

Q. Do you know the fur of the animal chinchilla?

A. I do.

Q. And is that something entirely different?

A. Well, it just doesn't resemble it in any way. It is so foreign that it would be utterly impossible to be confused.

Q. But they both bear the same name?

A. One is chinchilla cloth; the other is chinchilla fur.

Q. Are you familiar with doeskin-cloth?

A. Yes.

Q. Is there any doeskin in that?

A. No.

Q. Are you familiar with buckskin?

A. Yes.

Q. Is the same thing true of that?

A. Yes.

Q. It is a certain type of finish?

A. It is a certain type of finish, yes.

Q. Do you happen to know that the Alpacuna overcoat has a cotton back?

A. Yes.

Q. Do you know that there are other overcoats—is it a common practice now to have a cotton back in an overcoat?

A. I think it is a question of the type of back that gives you the greatest warmth and service, and Siegel's coat has a fine reputation because of its excellent service, which, of course, as a consumer, I am most interested in—what I can expect from it.

Q. You say you have never had any complaint of that overcoat?

A. Never.

Q. Excuse me.

(Pause.)

Q. In the course of your duties, Mrs. Richardson, or outside of your duties, do you or do you not appear at women's organizations, clubs, and that sort of thing?

A. Yes.

Q. And speak on trade matters?

A. Well, I speak on the program in our particular store, where I represent the consumer, and that is the labeling of merchandise so that the consumer shall never be deceived.

Q. And you lay yourself open to questions, and so forth?

A. Yes, I do.

Q. So that in that respect you continue to familiarize yourself with the attitude of the public?

A. Yes.

Q. That is part of your job?

A. That is part of my job. And the thing I have learned over a period of time is that the public is more interested in how will a garment wear, how to make it last longer, than what it is made of.

Q. How much interest does the public display in trade names?

MR. WILLIAMS: Now, I was just wondering. We have been objecting to that so much down the line, expressing the public's attitude—

MR. McCracken: Well, let me put it another way. I will withdraw that question and put it another way.

By MR. McCracken:

Q. Have you ever had any conversations or responses to your addresses from these women's organizations that you speak of which would indicate the amount of interest that they had in trade names?

A. I can't say that I have. I find that all women are familiar with trade names.

Q. You mean that women would know such a name as Onyx hosiery.

A. Yes.

Q. And they would come in and ask for it?

A. Yes.

Q. And they would know that it was manufactured by a certain company?

A. That is right.

Q. But you say the thing they are the most interested in—

A. Is the performance it will give them.

Q. --is the performance it will give them.

MR. McCracken: Cross-examine.

TRIAL EXAMINER REARDON: By the way, is Onyx hosiery sold in more than one weight?

THE WITNESS: I think it is sold in more than one weight.

TRIAL EXAMINER NORWOOD: More than one weight?

THE WITNESS: Yes.

MR. WILLIAMS: It has the same fibre content, though.

THE WITNESS: Well, if you have some—

MR. WILLIAMS: I am talking about Onyx. It has different weights, but it is the same fibre.

THE WITNESS: The name "Onyx" is a name I am not so familiar with. But I know, as a consumer, if I ask for a pair of silk hose by the name of Onyx, I might get perhaps four or five or six or seven thread.

MR. WILLIAMS: Would you expect the fibre to be all the same?

THE WITNESS: Yes.

MR. McCracken: May I ask one more question? I thought I was through, but I find I am not.

By MR. McCracken:

Q. Would you give us some idea of the extent of this work that you do among women's organizations? I mean this traveling about, and talking, and so forth.

A. Well, I am very much interested in the program. As you perhaps know, the consumer movement is one of the largest movements. Economic classes in schools, and that sort of thing, and consumers throughout the country demanded the right to know about the merchandise they buy. Now, that hit me just right, because I think they ought to know, too. So about four years ago I wrote a little note to the head of our store and sent in a clipping that I got from some women's magazine, saying, "This is the right idea." And it hit him the same way, and he said "Yes. People ought to know the merchandise." They formed a committee. I represented the consumer; somebody represented the store; and an independent laboratory represented the laboratory that would do the testing. The program has grown, because we have believed right along that by telling the customer the truth, what she is getting, it helps everybody. It helps the consumer buy more wisely and the retailer to sell more effectively. The consumer is satisfied, and the retailer is satisfied because he knows he is giving the consumer what she wants. Now,

that is my message. The organization in Philadelphia is not the only one. There are many in the country. But it so happens it is the one that is taking the biggest stand in the belief that the customer has the right to know, and one would never question the sincerity of that program could they see the number of items that are not accepted because they do not believe that that is the thing that the consumer wants.

Q. And how frequently do you go out and give them this message?

A. How frequently?

Q. Yes.

A. I have been twice to Temple University, the University of Pennsylvania, and women's clubs—well, I keep no diary, but on the average of three or four times a week.

Q. Do you really? Three or four times a week?

A. Yes.

Yesterday I spoke at the New Century Club, and the only reason I did not speak on that subject is because I was confused, and when I got there the New Century Club also wanted to hear about the consumer, and I—

MR. WILLIAMS: That is interesting, but I do not think the record ought to be encumbered.

By MR. McCracken:

Q. Just along the line of what you said, telling the consumer what is in the article, do you or do you not happen to know—to go back to Onyx hosiery—that Onyx hosiery is made sometimes from silk, sometimes from rayon, and sometimes from nylon?

A. Onyx hosiery makes three different types of hosiery. I have bought hosiery, and I have found that no one would ever dare to sell you rayon for silk, and neither would they sell you silk for nylon. It is either Onyx rayon, Onyx silk, or Onyx nylon. The three could never be con-

refused. No consumer could be so stupid, because I happen to know that the three things are obviously different.

MR. McCracken: Cross-examine.

Cross-examination.

By MR. WILLIAMS:

Q. I do not understand what you mean to say there. Do I understand you now to say that the same name for hosiery—using Onyx now as a typical example—could be used on silk alone, and on rayon, and also on rayon interwoven with silk?

A. That it could be?

Q. Yes.

A. Yes.

Q. Without being coupled immediately with "rayon," for instance?

A. No. I would say it would be Onyx silk hosiery, or Onyx rayon hosiery, or Onyx nylon hosiery.

Q. It would not stand alone? In other words, if a factory produced Onyx hosiery out of three fibres they could not honestly put them out as Onyx hosiery promiscuously without qualification?

A. They could say they made Onyx hosiery, and when I go in to buy it I can use my discretion as to what I want.

Q. Do I understand you to say that they can put out Onyx hosiery without identifying it as being rayon particularly in connection with that word?

A. They definitely can never do that, because there is a Federal Trade Commission ruling on everything that is rayon has to be marked "rayon."

Q. That is what I mean.

A. No, you could never buy rayon without it being so marked.

Q. So the word "Onyx" could never stand alone.

A. This is what I have in mind: If I should ask, "What is this Onyx Company?" Somebody would say,

“It is a hosiery company.” They would not say to me it is a silk-rayon-nylon company.

Q. So no company that put out two articles under one name could sell those articles under the one name without being qualified?

A. On the article, never.

Q. What?

A. On the article, never.

Q. It could—

A. It could never go out without being qualified, because rayon has to be qualified. There is a Federal Trade Commission ruling on that, and anybody that is a consumer knows that.

Q. Now, Mrs. Richardson, are you the consumer's counsel for men's articles as well as women's articles?

A. What did you say?

Q. Are you the consumer's counsel—

A. Yes; representative for both.

Q. Men and women?

A. Yes. As a consumer I am interested in everything the consumer does.

Q. I notice an ad of your store—and I will give the date, a little bit later if you don't mind—reading: “Alpacuna” in large type, and under it is “Overcoats \$40. Exclusive With Gimbel's.” Now, is it a fact that that same coat is exclusive with Gimbel's in Philadelphia?

A. The Alpacuna coat.

Q. That Alpacuna coat has on it a legend, doesn't it. “There is only one Alpacuna coat”?

A. Yes.

Q. Is that true? There is only one Alpacuna coat? I am talking about the coat itself.

A. Yes, there is only one Alpacuna.

Q. But isn't the Alperu coat exactly the same?

A. Yes.

Q. And sold in Philadelphia?

A. Yes; a competitor's store.

Q. Then, as a matter of fact, that coat, the Alpacuna, that you sell is not the only Alpacuna coat sold in this town?

A. It happens to be the name of the coat that Gimbel Brothers has—the Alpacuna.

Q. But it is a fact it is not the only Alpacuna coat—I am talking about the coat itself—in this town.

A. It is the only Alpacuna coat. If I go into some other store I cannot buy the Alpacuna coat.

Q. You mean you can't buy the same identical coat?

A. I did not say that.

Q. Then, you could go in some other store and buy this identical coat?

A. Under a different name? You asked me about Alpacuna. I say—

Q. You can go and buy an Alpacuna coat, the same identical coat—I am not talking about the label—the same identical coat?

A. Yes, you can.

Q. You call that a fair statement to your customers, to say that there is only one Alpacuna coat, when as a matter of fact there are at least two other names, two other coats being sold in the same town under two other names? Is that fair to them?

A. I don't think it is being unfair to them.

Q. You don't think it is?

A. Not when I buy an Alpacuna and know what it is. I don't think it is unfair.

Q. You have people that you look upon as your regular customers; don't you?

A. That is right.

Q. And they look upon you as their store?

A. Yes.

Q. Do you think it is fair to a customer that looks to you as being their store to be required to go to some other store to buy an article that you have in your store but under another name?

A. Well, I don't think that is very unfair.

Q. You don't think it is very unfair?

A. I don't think it is unfair.

Q. Now, I take it—

A. It is a trade practice.

Q. I am talking about the consumer. The trade is one thing—you know that, don't you?

A. Yes.

Q. —and the consumer is a very different animal.

A. That is right.

Q. The trade is subject to the consumer's will.

A. Yes.

Q. And your business is to correct these trade practices.

A. That is right.

Q. That is one of your principal functions?

A. That is right.

Q. Don't you think your customer has a right to buy articles in your store without being fooled by names and being taken to some other store on account of names?

A. I wouldn't say that I am being deceived.

Q. I am not talking about being deceived, but don't you think the customer has a right to buy where he pleases?

A. Yes, indeed.

Q. And buy the articles that he pleases?

A. Yes, indeed.

Q. That means if I want a certain type of coat that you sell I have a right to buy it from you rather than elsewhere; is that correct?

A. Yes.

Q. Now, take this very case: Suppose my friend would say, "I bought an Alperu coat at Lit Brothers the other day and it is a fine coat. I think you ought to buy one." I don't deal there. I deal at so and so's place. Well, they don't sell it there. And I am taken away from that same store, where I can buy that identical coat in my store. Is that fair to me as a customer?

Why hesitate, Mrs. Richardson?

MR. McCracken: You asked her a long question. Give her a chance.

A. I would like to answer it very fairly. I can't think that it is unfair. I can buy an Alpacuna coat at Gimbel Brothers or an Alperu at some other place. They are both excellent coats, coats that will give me excellent service.

By MR. WILLIAMS:

Q. I did not ask you to recommend the coat. One may be much worse. Yours may be much worse. I don't care. That is not in the case. The question is about the consumer having a right to deal where he pleases.

A. Yes. Definitely.

Q. And, secondly, that advertisements are gotten up in such a way as to take me away from my store by reason of trade names to get an article that I have—that you have in my store. Is that fair to the customer?

A. Well, I can see that is not being unfair at all.

Q. You can see that is not being unfair at all?

A. Yes.

Q. And you think your customers would be satisfied with that practice?

A. Yes, I do.

Q. In other words, it would not be their store any longer; it would be somebody else's store, although they can get the same thing.

A. That is beside the point. The thing is that if I buy an Alpacuna coat in Gimbel's—the question is, rather, that I would feel it was very unfair to get the identical coat by another name?

Q. It is unfair to me to take me away from my store to get the same coat.

A. I don't think it is unfair. If I deal in two stores, and I am getting the identical article, I don't think it is unfair.

Q. I am saying, as a customer, the customer tries to build up credit, with the store, doesn't he?

A. Yes.

Q. And I think you are willing to admit, and have to admit, of course, that people look upon certain stores as their stores, stores that they deal with always.

A. Yes.

Q. And you think it is fair to the customer to be driven away from the store to another store to get an article that you have in there under a totally different name but the same article identically? Do you think it is fair to me as a customer?

A. Yes.

Q. So if I come to you and say, "Mrs. Richardson, I am dealing with you for many years. I have built up credit with you. A friend of mine some time ago said he bought an Alperu coat at Lit's, and he persuaded me that it is a fine coat. It is the only place where it is sold in town. The Alperu coat is sold exclusively at Lit's." Then I come to you and say, "I find now you have the same coat here parading under another name." Do you think it is fair to me—after all these years?

A. To me it is a matter of identification, for more than one reason: If I got an Alpacuna coat, for example, and I have worn the thing out, and then I think, "Where did I get that coat?" Oh, yes, Alpacuna: Gimbel Brothers. It goes that. It means the trademark first. The trademark in itself means the coat, quality, and so forth. It means Gimbel Brothers. And that is where I would return for an Alpacuna coat. It does not seem to me to be an unfair thing to the consumer.

Now, if the coat that was called by the same name were two different qualities in different stores, then that would be one thing; but the same quality coat by two different names I think is quite a fair practice.

Q. Then, you think the customer is being foolish in building up credit in one store, as I have indicated. There is no value in dealing with one store all the time.

A. No value in dealing with one store?

Q. Yes, to the customer.

A. There is value in many different lines, along many of the—

Q. I asked you specifically that one thing.

A. Well, actually, I think there is a great value in a store having things that are easily identified with that particular store.

Does that answer the question?

Q. No, it does not answer the question. My question is: Isn't it of value to the customer to be known as a patron of your store? Doesn't he consider it of value to be identified with one store?

A. I will tell you why that is a hard question for me to answer, and I say this sincerely: That I don't know anyone who does not have a charge account in all five stores. It seems to be a common practice. And I frankly know that customers—and I am talking from the standpoint of the consumer—like to feel that they are in good standing in all five places, for occasionally Wanamaker's will have something that Gimbel does not have, or Strawbridge & Clothier may have something that Wanamaker does not have.

TRIAL EXAMINER REARDON: Just a minute.

I believe there is some evidence in this case as to whether or not the cloth that is in the Alpacuna coat is patented, so that I believe—it is not patented, so that other manufacturers make that cloth, that same weave. All right. That being understood to be the evidence, I will ask the witness this question:

If one manufacturer of cloth put out an overcoat made of that cloth under the name, we will say, "Genesee", and another manufacturer makes cloth exactly the same as that and puts it out under the name "Alpacuna"; now, would that be unfair to a purchaser, to go into a store where Genesee coats are

sold, when his friend tells him the same coat is sold under the name "Alpacuna" in another store?

THE WITNESS: Well, my answer to that question would be that most consumers don't know—or I as a consumer don't know so much about the manufacturer's name, so I wouldn't know—

TRIAL EXAMINER REARDON: Well, you do not know any reason why that would be unfair?

THE WITNESS: Not at all.

TRIAL EXAMINER REARDON: Do you know of any reason why the manufacturer should not sell the same cloth—one manufacturer should sell it under "Genesee", and another under "Alpacuna"?

THE WITNESS: Not at all.

TRIAL EXAMINER REARDON: You do not know of any reason?

THE WITNESS: No.

TRIAL EXAMINER REARDON: And if that is the case, do you know of any reason why the same manufacturer should not put out the same cloth under different names?

THE WITNESS: No. It is identically the same thing. It is identically the same thing. And that is the sort of thing that the consumer has become acquainted with.

By MR. WILLIAMS:

Q. That is not what I was driving at.

A. That is, definitely.

Q. What I am driving at is this: You have admitted that you do have people who look upon your store as their store.

A. Yes.

Q. And they deal exclusively with your store.

A. Possibly.

Q. Possibly so?

A. I do, myself, and yet I do go to other stores.

Q. But, as a matter of fact, you do have a number of customers who deal exclusively with your store; isn't that correct?

A. That is a question I can't answer.

Q. You don't know—

A. I don't know what the practice of purchasers is. But I do know that most everyone that I know deals with other stores. They may deal mostly with one store.

Q. Suppose you were addressing a ladies' club, and a lady says to you, "I have been dealing with you for many years, and I have found a number of people who do".

A. That is possible, of course.

Q. "I have found an article in your store which somebody else said he sold exclusively, although he has put another name on it. I did not want to deal with this other store, but I want to deal with your store. Why do you permit that practice? It takes me away from your store that I want to deal with, and obliges me to go to another store to get an article that I could get at your store?"

A. My goodness, that is a far-fetched question.

TRIAL EXAMINER REARDON: That is the question the lady put to you, you know.

By MR. WILLIAMS:

Q. I am asking what would be your answer to your customer.

A. If she said, "You carry something at Gimbel Brothers, and somebody at Jones' said that was exclusive in their store", I would say, "Why, the idea. It is a misstatement of fact. We sell it in our store".

Q. And suppose she said, "Don't you think you ought to clear it up in your store so that I may get the article in your store"?"

A. She knew it was in our store.

Q. No, she did not know it was in your store. It had a different name.

A. You did not tell me that.

Q. Suppose it is the identical article but it is under a different name. It is in your store under a different name, and she does not know you had the same thing under a different name.

A. But she got the article she wanted.

Q. I am now talking about the customer's interest in the store, and building up credit. They do that many times, don't they?

A. Yes. Yes, they do.

Q. Haven't I a right to do that?

A. Quite right.

Q. And haven't I a right to get it from your store rather than from Jones'?

A. Quite right.

Q. Is it fair for people to be put in that position, then, to be dragged out of some place where they prefer to deal to some other place just on account of names?

A. That is a complaint that I have never heard made, nor one that I have ever had. But I don't think that that customer would be mad at the store, at Gimbel Brothers, or she would not be mad at Jones' necessarily for saying that it was something by another name, perhaps another manufacturer. I have run into that many times—things that are very similar. It could be identical, for that matter, by a different manufacturer.

Q. You don't think so? You don't think a customer has a right to know that you got in your store the same identical article that Jones has in his store, if he wants to deal in your store, being one of your regular customers? That is the last time I am going to ask you that.

A. I don't think that the customer has a right to know?

Q. Yes, your patron. Your patron has got a right to

know that you got in your store the same identical article that Jones has.

A. Well, we hope she will know, yes. She has a right to know. It is all there for her to see.

Q. Yes, I realize that seeing business, but the point is some friend takes her to Jones', where she has found an article, the very same article but under a different name. Is that fair to your customer? That is the last time I will ask you.

A. I think it is entirely fair. Entirely.

Q. Then, I notice in your ad of Alpacuna overcoats—and I will give the date; 11 17 39—"Men. Go to it. Match this marvelous overcoat value if you can." What would that indicate?

A. That is a challenge. "Go around to Strawbridge & Clothier. Go around to Wanamaker's."

Q. Isn't the implication that you would not find it?

A. "Match it if you can."

Q. Isn't that an implication that you can't find it?

A. Well, that is—

Q. Why do you hesitate, Mrs. Richardson?

A. Well, that is an implication. I would say that is an implication; yes, I would.

Q. All right.

"Alpacuna is 26.3 percent warmer, is 1½ pounds lighter, and gives 61 percent longer wear because this fabric scientifically duplicates the natural coat of the animals from which hairs and wools are taken."

Now, what do I understand from that as to the fibre content of the coat—the whole coat—"rayon lined". As far as the coat is concerned, what have I a right to say that coat is constructed of as to fibre?

A. Well, to me, since—

Q. I am asking you about the customer.

A. To me, since I have heard about alpaca, I may

expect some alpaca in there. I may expect wool. But I have never heard of vicuna. So it would be like "Wheatena"—Alpacuna, Wheatena. I don't know what the "e-n-a" is, but I know what Wheatena is. Alpacuna—I know what Alpacuna is, but I never in my life heard of vicuna.

Q. I might mention to you that in Buck's exhibit in New York there have been millions of people who have looked at it for about 2 years.

A. Yes. I am talking about my own experience in buying—the customer's experience. I was so ashamed of my own lack of knowledge that I asked not one man but I asked a good many men, and they never heard of it.

Q. I am trying to get your reaction. There are a lot of people who do know about vicuna.

A. I would say I am a very average person, and if I don't know, I don't think many women who are dealing at Gimbel Brothers would know.

Q. It is sold in Washington, in Baltimore, Detroit—

A. We are talking about vicuna. You are confusing the issue.

Q. The Alpacuna coat is sold all over the country.

A. Alpacuna?

Q. Yes, ma'am.

A. Alpacuna? No, sir.

Q. Yes, ma'am. It is sold in Detroit, New York, Baltimore—

A. Alpacuna? By the name of Alpacuna?

Q. Yes, ma'am.

A. I thought Gimbel's Store was the only one that had an Alpacuna—Philadelphia, I am talking about.

MR. McCracken: Arnold Constable have it in New York.

THE WITNESS: Oh, I am sorry. I was thinking of my own shopping area.

By MR. WILLIAMS:

Q. So, then, people going to the World's Fair—there are millions there—and anybody who had seen that, that would have some implication, just as "alpaca" does have with you, because you do have alpaca in mind.

A. Yes.

Q. So if a person went there and saw the animal, wouldn't there be some relationship between that animal and the last part of that name?

A. If I knew all about it, definitely. But you were asking me the question, and I was answering it for myself and the type of people I represent.

Q. In other words, people who know about the vicuna have a right to infer from the last part of that name that there is vicuna in it?

A. I understand that vicuna is so rare it is not made. That is the reason.

Q. You saw one cloth that is made partly of vicuna.

A. I thought it was vicuna finish. I was not in on that.

Q. No. 43 has a little vicuna, and there is vicuna in 44; yes, ma'am. So, therefore, there would be some implication, the same as the implication to you of alpaca?

A. If a person were familiar with vicuna, I suppose that is very true.

Q. Now, the next thing I notice here, you refer to the fact that "This fabric scientifically duplicates the natural coat of the animals from which hairs and wools are taken". What conclusion am I justified in coming to as to the fibre content of that coat? Just name whether it is cotton or rayon or wool, or what not. What would I be justified in saying?

A. May I see it?

MR. McCracken: Show it to her.

MR. WILLIAMS: Certainly (showing a paper to the witness).

TRIAL EXAMINER REARDON: That is exhibit what, Mr. Williams?

MR. WILLIAMS: It is not an exhibit at all, so far. I will put them all in later. I gave the date.

A. Well, it does not give the content; does it?

By MR. WILLIAMS:

Q. It says here about the content, right there (indicating).

A. Yes. "The natural coat of the animals from which hairs and wools are taken".

MR. WILLIAMS: This is the same advertisement, I may say, 11-17-38, Gimbel Brothers, appearing in the "Evening Bulletin" of Philadelphia. That is the same one I referred to a while ago.

By MR. WILLIAMS:

Q. Now, what does that imply there as to the fibre content of that coat as regarding rayon, hair, wool, cotton, or what not?

A. Well, I will explain this ad as it strikes me, knowing the Alpacuna--

Q. No. What does that imply?

A. That I would find in the Alpacuna coat hairs from the alpaca and wool.

Q. Yes.

A. You must bear in mind that I never heard of vicuna, so I can't think of vicuna. I can only think of alpaca, perhaps. It says, "The natural coat of the animals from which hairs and wools are taken."

Q. Yes.

A. Wool, sheep; and hair, alpaca. That is certainly not vicuna to me.

Q. Therefore, I would be justified in drawing the conclusion from that article that that coat is made of hairs and wool?

A. Yes.

Q. And wholly out of those articles, of hair and wool?

A. That is what I would say.

TRIAL EXAMINER REARDON: Do you know where the alpaca wool comes from?

THE WITNESS: Well, there is an alpaca animal in South America, isn't there?

TRIAL EXAMINER REARDON: Yes. And you say it is a sheep?

THE WITNESS: A sheep; yes.

TRIAL EXAMINER REARDON: And that ad represents a certain type of wool?

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: Yes.

MR. WILLIAMS: May I now mark this advertisement we have been talking about?

TRIAL EXAMINER REARDON: Commission's Exhibit 114, for identification.

(The paper was marked for identification "Commission's Exhibit 114.")

MR. WILLIAMS: Off the record.

(Discussion off the record).

MR. WILLIAMS: And I also offer it in evidence.

TRIAL EXAMINER REARDON: Any objection?

MR. McCracken: I do not object to it, no.

TRIAL EXAMINER REARDON: Commission's Exhibit 114, for identification, will be received in evidence.

(The paper heretofore marked for identification "Commission's Exhibit 114," was received in evidence.)

By MR. WILLIAMS:

Q. Now, you say that there is quite a general demand in the country, particularly on the part of ladies, and I suppose to some extent on the part of men, for identification of materials out of which your merchandise is made?

A. Yes, there is.

Q. Do you consider that you have properly informed the consuming public as to the contents of an overcoat and a topcoat bearing the same name when you just advertise under the same name the overcoat and the topcoat, when they are of different constructions in fact?

A. Yes. Well, yes, because it is the trade name. It is the Alpacuna overcoat and the Alpacuna topcoat, which is not the same coat.

Q. It is not the same coat?

A. No. It is the trade name "Alpacuna".

Q. May I call your attention to the fact that the legend says "There is only one Alpacuna"?

A. Well, Alpacuna stands for quality, to me, and I am sincere when I tell you that. Alpacuna is a name of quality. If I were to buy an Alpacuna suit, I would say, "Good. Alpacuna is making suits".

Q. All right, Alpacuna is making suits. When you buy that suit you would not know whether you had a cloth back or a wool suit.

A. But if I bought an Alpacuna I would have confidence in it. I would expect a certain performance.

Q. I am asking you: Is it fair to these people, who, you now say, and it is true, are demanding to know what the material is, or what the articles they buy are made from,—is it fair to them to put two coats out under one name without any qualification at all, just advertising it as you see it advertised occasionally, when those coats are of two different fibre constructions?

A. It is entirely fair if you tell those customers—

Q. You don't tell those customers; you advertise. You say "Alpacuna coat". I will wager you have got an over-

coat in your window now with no other identification than "Alpacuna coat". If I went by there now I would see nothing but "Alpacuna coat".

A. Then, you mean I would be confused whether it was an overcoat or a topcoat?

Q. No. If I did not know what the coat was actually composed of, wouldn't I naturally suppose that the overcoat in the window, just marked "Alpacuna" without any identification of the fibre, was the same fibre, was the same material content? Wouldn't I be justified in drawing that conclusion, as a customer?

A. Not necessarily.

Q. But wouldn't I be justified in drawing that conclusion? Not necessarily, but wouldn't I be justified in drawing that conclusion from that?

A. Would you be justified?

Q. Yes.

A. Or are you asking me am I justified?

Q. No.

A. I would not be justified, because if I saw an Alpacuna coat I would not necessarily think they had to be of the identical construction, no.

Q. Well, I am saying, an ignorant customer, such as I am, regarding fabrics and fibres, and I see in your window two coats, one a topcoat and one an overcoat, and I see the identically the same medal that they hang onto it, and also a label, being identical in both coats, and on those labels it said, "There is only one Alpacuna coat." It doesn't say, "There is only one Alpacuna overcoat", or "There is only one Alpacuna topcoat". All that appears in the window is "Alpacuna coat".

A. And the two coats are in the window.

Q. Yes.

Wouldn't I be justified in saying the fibre content would be the same?

A. Not necessarily. The appearance is different.

Q. The appearance is the same.

A. Oh, not at all.

Q. You mean through the window they would not be the same?

A. A topcoat and an overcoat?

Q. Yes.

A. Now, let me get this straight. There is a topcoat and there is an overcoat in the window—

Q. Yes, with the same tags exactly.

A. And both Alpacuna coats.

Q. Yes, with no identification as to fibre.

A. Now, do they look different to me? Not at all.

Q. They do look different. Assume they look different to the customer through the window, except as to weight.

A. Yes.

Q. Except as to weight. You said you were not familiar with those coats particularly.

A. You asked me if I could tell—if I expected to find in a topcoat and an overcoat the identical fibre. Now, didn't you ask me that?

Q. I asked you, as a customer—

A. Of course as a customer, because I never heard of this before. I never heard of it. If I were looking in a window I expect I could distinguish between a topcoat and an overcoat, and if I could distinguish between the overcoat and the topcoat, why, it may be possible they may be entirely different.

Q. It would be possible. You, of the consumer's organization—

A. You are asking me a question and I am answering. Obviously you do think they look identical. Do they?

Q. Of course they do.

MR. McCracken: Wait a minute.

THE WITNESS: Except as to weight.

MR. McCracken: You can't testify, Judge Williams. If you want to know whether they look identi-

cal, I will have brought in here this afternoon a top-coat and an overcoat, both Alpacuna, and we will put them up before the court. That is the only way.

MR. WILLIAMS: Let me make this statement—and if I am wrong I will correct it: The fibre content of both coats, that is, the exposed part to public examination, is exactly the same; isn't that correct?

THE WITNESS: Is it?

MR. WILLIAMS: I am asking Mr. McCracken.

MR. MCCrackEN: I can't answer that, whether it is or not, but I do know that the coats are as different as a plow horse and a race horse.

MR. WILLIAMS: I am talking about the fibre content, and the record here shows that time and time again that all of the exposed parts are made of the same fibre.

TRIAL EXAMINER REARDON: Does that show in the evidence?

MR. WILLIAMS: Yes, time and time again.

TRIAL EXAMINER REARDON: That is a simple question. Now, you are looking at two coats in a window and what you see is made of the same cloth.

MR. WILLIAMS: Exactly. Made of the same fibre content exactly.

TRIAL EXAMINER REARDON: What is the question?

By MR. WILLIAMS:

Q. And all that you can see is exactly the same fibre in both, in all the exposed parts of the two coats.

A. May I answer it in this way, that if those coats in the window are identical—now I mean identical—

TRIAL EXAMINER REARDON: From what you can see.

THE WITNESS: —from what I can see are identical—now, remember, identical—then I would expect identical coats. But can an overcoat and a topcoat look identical? Absolutely identical?

TRIAL EXAMINER REARDON: Now, wait a minute. Don't get confused here. It has already been explained that they do look identical. When you look in the window all you can see is cloth, and the cloth you are looking at is identical. But when you ask can they be identical, you refer to something that you can't see in the coat, which must be the construction. Obviously, there is no dispute between the witness and counsel.

MR. McCracken: I am going to ask the privilege, Mr. Examiner, of bringing in this afternoon an overcoat and a topcoat, both Alpacuna, and of the same color, and presenting them here, and asking a witness whether or not they look identical.

MR. WILLIAMS: I did not import the word "identical" in this examination.

MR. McCracken: I think you did.

MR. WILLIAMS: I was distinguishing between materials and fibres. I said the coats are made of the same fibre content. That is what I said.

By MR. WILLIAMS:

Q. Now, both of those coats are made of the same fibre, as far as your eye or hand can tell.

A. Not at all. A topcoat and an overcoat would not look identical, not even through a window, unless I am very much mistaken in the topcoats and the overcoats that I have seen. Now, if you can prove that I am wrong this afternoon, I will be glad to admit it.

TRIAL EXAMINER REARDON: There is some confusion between you and the witness. It is conceded

that looking at a topcoat and looking at an overcoat in a window, and there is nothing between your eye and the material—it is conceded that what you are looking at is exactly the same material. Now, why can't you put a question that is based on that? Your question is based on something that nobody could have any different conception of. Isn't your question, "Would you expect the same construction or would you expect anything underneath those coats"?

MR. WILLIAMS: All right. It had two angles: One angle was the material content in the broad sense looking alike; and the second was the actual fibre content.

TRIAL EXAMINER REARDON: Do you mean by "actual fibre content" everything in that coat?

MR. WILLIAMS: Yes.

TRIAL EXAMINER REARDON: Well, that makes it plain to the witness.

In other words, would you expect any other material behind that which you see, which is wool?

THE WITNESS: I would expect, if there was an overcoat and a topcoat under the name "Alpacuna" that they would not be of the same construction.

By MR. WILLIAMS:

Q. You mean it would be different fibres? The material would be made of different fibres?

A. I would expect it to be wool, of course; but the construction of the overcoat would, to me, have to be different than the topcoat.

TRIAL EXAMINER REARDON: You mean by "the construction" when you look at the cloth in a topcoat and it is the same as the cloth you look at in an overcoat you would expect that the overcoat would be dif-

ferent because there is something added that you can't see?

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: In other words, a lining, or whatever it may be?

THE WITNESS: When I buy it I am not going to buy it through the window. When I buy it I will know what it is.

By MR. WILLIAMS:

Q. When you buy that coat and you look at two coats, and you find all the exposed parts being made of the same fibre—

A. Well, that is all right.

Q. —then you expect the whole overcoat and the whole topcoat to be made of the same fibre?

A. Not necessarily.

Q. Not necessarily?

A. Definitely not, because one is an overcoat—you can't possibly confuse me on this—because an overcoat is an overcoat, and a topcoat is a topcoat. I think it is an unfair type—

TRIAL EXAMINER REARDON: You are familiar with an article they call a camel's hair coat?

THE WITNESS: Yes, I have seen camel hair coats.

TRIAL EXAMINER REARDON: Have you seen ordinary wool coats?

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: And you can distinguish between one and the other?

THE WITNESS: Well, the camel hair is usually distinguished by the light camel hair color.

TRIAL EXAMINER REARDON: And it is a different material from the wool coat?

THE WITNESS: I have seen wool coats made up very much—I can't—I don't know that I can—

TRIAL EXAMINER REARDON: Here is the idea I am driving at: Imagine hanging on the wall in front of you one of those light-colored coats that you have described and a dark-colored coat. Now, a stranger came into the room, and in describing those coats to him what would you say to him? I do not mean a long description, but what would you naturally say? You would say "This is" what, and "That is" what, referring to those two coats?

THE WITNESS: Well, he would pick the light one as being camel.

TRIAL EXAMINER REARDON: No, I mean what would you say?

THE WITNESS: Which of those two—

TRIAL EXAMINER REARDON: I think it will be conceded. It is a simple question. "That is a camel hair coat". Isn't that what I would say to him?

MR. McCracken: Yes.

TRIAL EXAMINER REARDON: And, "That is a wool coat." Isn't that what I would say?

MR. McCracken: Yes.

TRIAL EXAMINER REARDON: In other words, what I am trying to say, isn't it a natural thing when you describe a coat to say of it that it is a coat, referring to the outside material, which is the distinguishing thing that is in the coat? In other words, when I go in to buy a camel hair coat I call it a camel hair, and when I go in to buy a wool coat I call it a wool coat. Now, do I refer to the lining in a wool overcoat?

THE WITNESS: No.

TRIAL EXAMINER REARDON: Could it be a silk lining or rayon lining?

THE WITNESS: Yes, it could.

TRIAL EXAMINER REARDON: And in either case wouldn't I ask for a wool coat. I am not concerned with the lining, am I?

THE WITNESS: No.

TRIAL EXAMINER REARDON: Because after I find the wool coat I could say, "What is it lined with?"

THE WITNESS: That is right.

TRIAL EXAMINER REARDON: And when I describe a wool overcoat I describe it without paying any attention to or intending to name the lining, which may be alpaca, or silk, or rayon.

THE WITNESS: That is right.

TRIAL EXAMINER REARDON: Now, what I would like to have brought out is this, a similar condition with regard to the backing, which is something between the lining and the coat.

You may proceed.

By MR. WILLIAMS:

Q. Now, then, when he said it was a wool coat it would be a wool coat, wouldn't it, all through, except the lining?

A. Well, the coat that he was talking about would be wool.

Q. Yes, surely. And if your customer would examine it—suppose he buys a topcoat first, and he examined the topcoat first, and he found wool completely through—the Alpaca is wool from center to circumference, or periphery to the other point—in other words, it is con-

pletely wool; then he came in to buy an overcoat called Alpacuna, and it says, "There is only one Alpacuna coat". Wouldn't he naturally expect to find a wool overcoat, except the lining? I am leaving the lining out. Wouldn't he expect to find the same material content?

A. I don't think necessarily, no, since—

TRIAL EXAMINER REARDON: Would you expect to find a backing? There is a cotton backing actually in the Alpacuna overcoat.

THE WITNESS: Well, the Alpacuna overcoat is a heavier overcoat made of wool with a cotton backing. I know that. The topcoat might be a finely woven wool. There would be much more wool perhaps in the Alpacuna overcoat, of course, than there might be in the topcoat.

By MR. WILLIAMS:

Q. Then, do I understand you to say that you think it is fair to your customers and the people that you lecture to to say that a man can put out two coats, a top coat and an overcoat, under one name, and under the legend, "There is only one Alpacuna coat"?

A. Definitely. There is only one Alpacuna.

Q. But, as a matter of fact, there is more than one Alpacuna.

A. General Electric puts out all kinds of electric bulbs, but it is General Electric. That is the way it seems to me.

Q. But these bulbs are different as to Kilowatts.

A. So is the coat.

Q. No.

A. The topcoat and the overcoat.

Q. Oh, no. There is no change in the material content. I will wager you will find one of those coats displayed in your window today with a placard "Alpacuna coat" that Gimbel hangs out, showing some South Am-

erican animal, "There is only one Alpacuna coat", and you find over it a topcoat and an overcoat, named the same, labeled the same, and it says, "There is only one Alpacuna coat". Now, do you mean to tell me you would tell the customer that they do not have the right to expect the two coats are made of the same fibre content?

A. No, sir.

Q. Would you tell your customer that?

A. Definitely.

Q. You lecture to the women's clubs today that that is fair advertising?

A. Now, if I did not feel it I would not say it.

Q. Let me ask you: Would you go to the women in this town—I am trying to find out what your viewpoint is.

TRIAL EXAMINER REARDON: It does not necessarily mean that Counsel is right.

A. My viewpoint is definitely this, that Alpacuna is a trade name. The first part of that trade name is "Alpac". The "una" is like the "e-n-a" in Wheatena. Now, I don't know. I haven't been to the World's Fair. I am not one of the smart New Yorkers. But that is a trade name, and there is only one trade name that stands for this. Now, that is what it means to me.

Now, we have an overcoat under that trade name and a topcoat. Now, even though I don't know vicuna, I would be pretty dumb not to know a topcoat from an overcoat. And when I buy it under the name of Alpacuna I don't expect to find necessarily—or don't expect to find the identical thing in the overcoat that I find in the topcoat.

Q. I would love to hear you make that statement to the women's clubs.

A. I would definitely make it, because I represent the type of buying public that does not expect vicuna.

TRIAL EXAMINER REARDON: Off the record.

(Discussion off the record.)

TRIAL EXAMINER REARDON: For the record.

MR. WILLIAMS: Now, all right, I will probably conclude with this question?

By MR. WILLIAMS:

Q. Then, as I understand it, to sum up your views on this matter as to whether or not there is a difference to be expected in the material content of the two coats, the topcoat and the overcoat, bearing the identically same name, same label, and the same medal, without any identifying matter of any kind as to the fibre content of either coat, I understand you to say that the public would not be justified in drawing the conclusion that those two coats were made of the same fibre content?

A. Throughout, you mean.

Q. Throughout, except the lining. Is that a fair resume of your statement?

A. Yes, that is fair.

Q. That is a fair resume?

A. Yes. It doesn't say that one could not have something added to it that the other did not happen to have. If one is all wool, to make it better you could have something else added to it. One might have a rayon lining—

Q. I am not talking about the lining.

TRIAL EXAMINER REARDON: Put your question, instead of the same fibre only one fibre, which would not be confusing.

MR. WILLIAMS: I was afraid she would mean just alpaca, which I did not mean at all.

TRIAL EXAMINER REARDON: I thought your question might lead the witness to say she would expect nothing in the way of different linings, different materials.

MR. WILLIAMS: Not linings. The fabric of the coat is what I am talking about.

By MR. WILLIAMS:

Q. Do I understand the same would be true—a person could examine the topcoat all around and see it was all wool, but could not examine the overcoat to find that there was anything else but wool, and when all the exposed parts of the overcoat were of the same fibre content as the topcoat, then a person still would not be justified in believing, according to your viewpoint, that they were made of the same material?

A. You mean when I got home I would be unhappy and dissatisfied if I didn't find any more? Is that what you mean?

Q. No. I asked you if a person would be justified in drawing the conclusion as to the fibre content of those two coats, when your topcoat can be examined from one end to the other and shown to be all wool from one end to the other.

A. Yes.

Q. And I now take up the overcoat, and there is nothing that I can touch that would tell me that that is not exactly the same fibre content that the overcoat is, and that whatever other material there is, I would not say it is concealed, but it is covered up by the lining; if there is any other fibre it is not exposed to you at all. Now, would I be expected to find the same material content in those two coats, or would I not?

A. I don't think that you would necessarily be expected to find in two coats, that are constructed as differently—

Q. All right. By reason of your using the words "not necessarily" I have a right to draw the conclusion that I might; is that correct?

A. It is so evident that you would and that I would not, there is no use arguing.

Q. In other words, you don't think anybody would be justified in drawing that conclusion.

A. Anybody?

Q. The average consumer.

A. I am supposed to be representing that one, and I say no. If I became an expert I would lose my job. I am supposed to represent the consumer.

Q. You have been there six years.

A. It takes a little bit longer than that to become an expert when you have to deal with everything in the store; but you become a pretty good shopper, yes.

Q. I am asking you, do you suppose that your customers would expect to find that the overcoat, which, from an examination, as far as you can do it without destroying the coat, is of exactly the same material as the topcoat? Wouldn't you think that a number of customers would naturally think the two coats were made of the same material?

A. No, sir.

Q. You don't think you would?

A. No, sir.

Q. I am afraid I have not made myself clear.

A. I have made myself very clear. I understand what you are saying.

TRIAL EXAMINER REARDON: Put it this way: You have got the overcoat. You see an overcoat described as an Alpacuma overcoat, and you buy it, and you take it home, and, for some reason or other, you open the lining and you see there is a backing behind the outer surface of the coat. Would you be surprised? Would there be any change in your attitude? Would you be surprised to find the backing there, or were you deceived as to what the material of the coat was by finding it there?

THE WITNESS: No, because they boast of that so, because that is part of the construction that makes it

such a valuable coat, and so I would not, because that is the overcoat construction.

By MR. WILLIAMS:

Q. You are talking, Madam, with a prior knowledge. I am talking about a person off the street.

A. Do you want to hear me buy an overcoat? I think that would be the best way. I would go in and I would say, "What is this made of?" And the salesman would say "This is wool and it has a cotton backing." Then I would know. I am a hard spender. You don't know me.

Q. I see a person going along the street seeing these two coats; one coat is the topcoat, and it is all wool from one end to the other, bearing the same name, the same legend, and the same label, the same medal, both of which say, "There is only one Alpacuna." There is no description as to fibre content. The part that you can get your hand on is wholly wool. You take the other one and as far as you can touch it with your hand it is wool. You mean to say the customer would not be justified in drawing the conclusion—not necessarily, but wouldn't the customer be justified in drawing the conclusion, without more identification, that they were of the same fibre content throughout except the lining?

A. Well, Your Honor, may I say something? May I just say something? There is no woman that I know that would buy a coat by just looking at it in the window.

Q. How about men?

A. And before you purchase that coat and spend your hard earned money you would say, "What is this coat made of? Is it all wool?" And they would say, "Well, it is wool with a cotton backing." And the salesman tells you this definitely, because he wants you to know.

Then I would look at the topcoat and I would say, "What is this?"

"This is all wool."

But obviously they are different.

I mean, that is the way I buy, so I would not be deceived.

Q. The point is, however, Mrs. Richardson, that that method of presenting that coat would throw you back on the salesman to tell you what it is made of.

A. Not necessarily. I see them in the window.

Q. All right, Madam.

A. I still don't believe—you couldn't ever make me believe that if I saw an overcoat and a topcoat in a window I would not be able to tell you the difference.

Q. You mean as to the fibre content of the material.

A. All the way, just glancing in the window, I couldn't tell the fibre contents.

Q. Suppose you go in the store—

A. Now we are getting down to business.

Q. You examine the coat, the topcoat, and you find that topcoat is wholly wool.

A. Yes.

Q. And you go to the overcoat—

A. That is right.

Q. —and you find everything you can touch on there is the same fibre that the other is made of.

A. Now, what is next?

Q. Would a customer be justified in drawing the conclusion that that material of which the overcoat was made was the same fibre as the other, or was wholly wool the same as the other coat?

A. You see, it is only because—even seeing the topcoat I couldn't tell if it was all wool. I always ask questions.

Q. That is the point exactly.

A. By just looking I couldn't tell. I always ask.

Q. I am eliminating the question of reliance on the store to tell you what the coat is. As it stands alone, am I justified in drawing the conclusion that they are both made of the same fibres?

A. No.

TRIAL EXAMINER REARDON: You think there is

something behind the material. For instance, you know there is a lining.

THE WITNESS: That is right. I can only see the outer side.

MR. WILLIAMS: I am not talking about the lining. I am talking about the material of the coat.

THE WITNESS: I understand.

TRIAL EXAMINER REARDON: I am not trying to confuse the issue. I am trying to make it plain.

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: There are items behind the thing she is looking at, and by using the word "fibre" it is difficult and perhaps confusing to the witness, and I have tried to assist to get it clear. Now, as you look at the coat on the outside, would you expect to find the same fibre right through the thing?

THE WITNESS: No.

TRIAL EXAMINER REARDON: What would you expect the fibre of the lining to be?

THE WITNESS: The fibre of the lining could be almost anything.

TRIAL EXAMINER REARDON: The fibre could be silk, cotton, or wool, or anything.

THE WITNESS: It could be, to me.

TRIAL EXAMINER REARDON: And what you are looking at is wool.

THE WITNESS: That is right.

TRIAL EXAMINER REARDON: And the question is, would you expect to find anything behind the outside—

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: —of the coat, the wool that you see?

THE WITNESS: Yes; I would.

TRIAL EXAMINER REARDON: What is one of those things you would expect to find?

THE WITNESS: The lining.

TRIAL EXAMINER REARDON: And would you expect something else back of that?

THE WITNESS: No, I would not necessarily expect anything else behind that.

TRIAL EXAMINER REARDON: But if you found something else, would you expect it to be of the same construction as the outside?

THE WITNESS: No. It could be in the making of that coat anything. They could have put anything in there.

By MR. WILLIAMS:

Q. Now, Mrs. Richardson, some people do make wholly woolen overcoats, don't they?

A. Yes.

Q. And those woolen overcoats are lined?

A. Yes.

Q. And some other people make wool coats that have cotton backs, also lined?

A. Yes.

Q. Now, how can any customer know without being told the material content of the coat?

A. He couldn't tell.

Q. Therefore, he is thrown back on the store?

A. Quite right.

Q. Do you think it is entirely fair to put me on the reliance of the store to tell me—

A. Oh, entirely fair. The integrity of the store is

something that you have to depend on. How can we buy any piece of merchandise unless we ask questions? That is a very far-fetched question, if I may—

MR. WILLIAMS: Off the record.

(Discussion off the record.)

By MR. WILLIAMS:

Q. Then, I understand you to say that advertising is perfectly proper which forces the customer to go back on the store to tell them that the article is different from its appearance?

A. I did not say that, nor did I imply that.

* * * * (N. T. pp. 979, 995 inc.)

LOUIS S. POTSDAMER was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. State your name for the record, please.

A. Louis S. Potsdamer.

Q. Where do you live, Mr. Potsdamer?

A. Twenty-second and Chestnut, Philadelphia.

Q. What is your business?

A. I am director of Gimbel's Bureau of Standards.

Q. Just tell us a little more about it, what that means.

A. Well, Gimbel's store has a laboratory which operates as a bureau of standards in the evaluation of merchandise and checking up of the various kinds that are made, establishing their own merchandise.

Q. And you are in charge of that?

A. Yes, sir.

Q. How long have you been in that position?

A. Eight years.

Q. And what was your work before that?

A. Textiles.

Q. I beg your pardon?

A. Textiles.

Q. You have been associated with textiles all your life?

A. No, sir; for the last 16 years.

Q. Sixteen years.

A. Previous to that I was in the Army, and previous to that in the paint business.

Q. Now, you are familiar more or less with various types of textile goods; are you?

A. I think so.

Q. And have been for 16 years?

A. Yes, sir.

Q. You are also familiar in this Bureau of Standards, I presume, with the use of trademarks and trade names?

A. Yes, sir.

Q. And with advertising of such?

A. Yes, sir.

Q. You know, do you not, that Gimbel Brothers are selling an overcoat known as an Alpacuna overcoat.

A. Yes, sir.

Q. Also the topcoat.

A. Yes, sir.

Q. You are familiar with that trade name?

A. Yes.

Q. What does that trade name mean to you?

A. To me it stands for a quality article.

Q. For what?

A. For a quality coat.

Q. Made by a particular manufacturer?

A. Yes; Jacob Siegel Company.

Q. Does it stand for anything else?

A. Not to me.

TRIAL EXAMINER REARDON: Does it stand for any article made by anybody else?

THE WITNESS: No.

TRIAL EXAMINER REARDON: Or sold under any other name without Siegel's consent?

THE WITNESS: No.

TRIAL EXAMINER REARDON: In other words—

THE WITNESS: I think it belongs to Siegel.

By MR. McCracken:

Q. It is a registered name belonging to Mr. Siegel?

A. That is my understanding.

Q. Now, are you familiar with the slogan that accompanies that name "There is only one Alpacuna overcoat"?

A. Yes.

Q. What does that mean to you?

A. Well, I take it that that means that there is only one overcoat that can have the name "Alpacuna".

Q. Does it mean that that same overcoat cannot have some other name as well?

A. Oh, no, not at all.

Q. Are you familiar with the fact that the same identical overcoat is sold under other names?

A. It is sold in Philadelphia at Lit's under the name "Alperu".

Q. Is there anything unusual about that, in your opinion?

A. No.

Q. Are you familiar with the word "vicuna"?

A. Yes, I am.

Q. In what definition?

A. I know what the animal is and where it is found.

but I have never seen any piece of cloth, a real piece of cloth, that is made of it.

Q. Do you know whether the name "vicuna" is used in any other connection?

A. Only to represent a finish, but I am not acquainted with that cloth.

Q. You heard Mr. Degerberg on the stand this morning; did you?

A. Yes.

Q. And you are not familiar with that cloth?

A. I would not know the cloth if it was handed to me.

Q. But had you known that there was such a finish before this morning?

A. Yes.

Q. In other words, that is a developed trade name? Is that a secondary use?

A. That can be a secondary use of it.

Q. Are you familiar with the fact that there is both—I think I asked you if both an overcoat and a topcoat were sold under the name Alpacuna.

A. Yes, sir.

Q. What is the difference between an overcoat and a topcoat?

A. Well, primarily the difference is in the weight of the fabric that is used, the construction of it, the way the fabric is put together; that is, the final construction.

Q. If you look at the topcoat and examine the outside appearance of the fabric, would you expect the same fabric to be in an overcoat bearing the same name?

A. It couldn't be, because one kind would weigh between 28 and 32 ounces, and another would weigh between 16 and 19 ounces.

Q. Would you necessarily expect the additional content of the overcoat to be of the same fibre content as the topcoat?

A. No.

Q. Even though they bore the same name?

A. No.

Q. Is it customary for the owner of a trademark in the clothing trade to sell more than one type of garment under that same trademark or trade name?

A. Will you repeat that?

Q. Is it customary for the owner of a trademark, such as "Alpacuna", who makes several types of garment, to sell them under the same name?

A. I am not sure I understand the question. Do you mean the same thing as Alpacuna and Alperu?

Q. No. Suppose Mr. Siegel, who owns the Alpacuna trademark, decided to make, in addition to a topcoat and an overcoat, a sweater or raincoat or a suit of clothes, would it be unusual to sell them under the name "Alpacuna"?

A. No.

Q. Although they may not have the same fibre content at all?

A. That is right.

Q. What is the custom in your store, as you understand it, of customers who come in to buy an article which has been advertised? Do they or do they not inquire from the salesman as to its—

MR. WILLIAMS: If Your Honor please, I think it is a little outside of his realm.

MR. McCracken: Is it? Let me ask the witness if it is.

THE WITNESS: It is.

MR. McCracken: All right, then, I withdraw the question.

By MR. McCracken:

Q. You say that you are the director of the Bureau of Standards, and it is your position to see that standards are maintained by the store; is that it?

A. Let us make it clear. It is Gimbel's Bureau of Standards.

Q. Gimbel's Bureau of Standards, yes.

Do complaints on merchandise which is purchased come across your desk?

A. Many such complaints.

Q. Have you ever had a complaint with respect to the Alpacuna overcoat?

A. Yes. If a customer comes in and thinks that a hole has been torn in it or created by a moth, which might be the fault of the store, the thing comes to us.

Q. Have you ever had any complaints other than such as that?

A. No.

Q. Have you ever had a complaint that the overcoat had a cotton back?

A. Never.

Q. Or that it was not exactly the same as the topcoat?

A. No.

Q. Or that it was not as advertised?

A. No.

MR. McCracken: Cross-examine

Cross-examination.

By MR. WILLIAMS:

Q. I thought I understood that Mrs. Richardson was in charge of the department where the complaints came in.

A. Mrs. Richardson has one side of it and the Bureau of Standards has another. The Bureau of Standards, Judge Williams, is a laboratory basically, and when things get to a point where they want a final opinion, then they take ours as a final opinion. They come up to us. We don't get every complaint.

Q. You would not get any complaint involving identification of fibres in advertising?

A. Oh, yes, we do.

Q. What I mean to say, if they were well known you wouldn't get it. It is only if there is a question what the coat is made of.

A. I don't quite understand what you mean.

TRIAL EXAMINER REARDON: You have occasion to decide by tests whether a thing is silk or rayon, or whether it is wool; is that right?

THE WITNESS: Absolutely.

By MR. WILLIAMS:

Q. That is one side. Now, as I understand, Mrs. Richardson is the one handling matters of complaints. For instance, if I come in and want to know if this had cotton in it or this had rayon in it.

A. That is true. But there is just one more side that Mrs. Richardson would not be able to tell you. She has no way of testing it.

Q. We are assuming the content is known to her.

A. That is right.

Q. They would never reach you.

A. That is right.

Q. So if a person would take the back off and say, "Is this a cotton back?" She would say, "Yes." She couldn't deny it very well. She would say "Yes, it is a cotton back." That would not reach you.

A. No. She would settle it.

Q. Now, what did I understand you to say was the primary difference between an overcoat and a topcoat?

A. The primary difference between an overcoat and a topcoat is the construction of the fabric. Whereas one is a light weight coat the other is a heavy weight coat—heavy weight fabric. That is, the fabric of one would be 28 to 32 ounces, and the fabric of the other would be from 16 to 19 ounces.

Q. In other words, you mean the manipulation of one fibre in relation to the other?

A. The construction, the way the yarn is put together.

Q. But that also necessarily implies, I gather, that that is the same yarn?

A. No, not at all. If you use the same yarn you would not get the same weight.

Q. I am not talking about the same weight; I am talking about different weights.

A. Well, if you use the same yarn the weight would not be different.

Q. You mean you couldn't get a closer weave?

A. But you couldn't get it that tight, from 16 to 32 ounces, using the same weight yarn.

Pardon me just a minute.

If your first cloth was a tightly woven cloth you couldn't jam in twice as much yarn.

Q. Suppose we confine ourselves to overcoats.

Now, do I understand from you that there are no overcoats and topcoats of exactly the same fibre content?

A. I did not say that.

Q. I thought the inference was that.

A. I did not say that.

Q. You just said a while ago it had to be a different fibre construction.

A. Pardon me. I did not say that.

May I have it read back?

MR. WILLIAMS: I am perfectly satisfied if the Examiner is.

TRIAL EXAMINER REARDON: When you speak of an overcoat, what are you speaking of? Are you speaking of a coat that has nothing but wool in it?

THE WITNESS: When I speak of an overcoat I speak of a coat that is made of a heavy fabric.

MR. WILLIAMS: If Your Honor please, I would

like very much to go back and see if I misconstrued the answer.

TRIAL EXAMINER REARDON: When you speak of a heavy fabric, are you speaking of the outside material?

THE WITNESS: That is right.

TRIAL EXAMINER REARDON: That is what I wanted to make clear in my mind.

MR. WILLIAMS: All right, now, will you go back and read that, please?

(The record was read.)

TRIAL EXAMINER REARDON: What do you mean by the same yarn? You mean the wool yarn,—the light wool yarn is not the same as the heavy wool yarn?

THE WITNESS: Yes, sir; nor is it necessarily the same component fibres.

By MR. WILLIAMS:

Q. Now, as I understand from what you said, it is impossible to get the variation of weights with the same fibres?

A. No, sir.

Q. You did not say that?

A. No, sir.

Q. That is what I want to be clear on.

A. I said that you cannot take a closely woven fabric, or a closely knit fabric, such as a topcoat, a man's topcoat, and double it up to get the double weight.

Q. Taking the two coats, the overcoat and the topcoat, do I understand you to say that there is necessarily a difference in fibre content?

A. No.

Q. There is not?

A. No.

Q. All right. That is the point I was making exactly.

A. You asked me is it necessarily, didn't you?

Q. Yes.

A. Well—

Q. It is not necessary. All right.

Now, do you mean to say that the two fabrics in these two coats are not different—the topcoat and the overcoat?

A. The face—

Q. I am talking about the fabric. Answer the question and then explain.

A. No. One of them is—there are several differences between them.

Q. All right. Name them.

A. First of all, you have got a light weight fabric which is used as a topcoat—

Q. I am talking about fibre identification.

A. Will you let me finish, please?

Q. All right. If you want to do it that way, go ahead.

A. I say they are not alike. The lightweight fabric is from 16 to 19 ounces, the heavyweight fabric is from 28 to 32 ounces. And these coats are constructed so that the face, the outside, is identical as to fibre content; but in order to obtain the results that are wanted to get warmth in the overcoat, these coats are made with a cotton backing.

Q. We all understand that. You know that from an examination this morning.

A. No. I have known it before.

Q. But what I was trying to ask you before was whether or not the two—what you call the fabric of those two coats—the fabrics were different as a matter of fact.

A. Constructed differently, yes.

Q. And also of different fibres.

A. You have got a backing on one that you don't have on the other.

Q. So the fabrics of those two coats are different.

A. I wonder if I can't clarify my answer.

TRIAL EXAMINER REARDON: You said what you look at in the topcoat is fabric.

THE WITNESS: Yes, sir.

TRIAL EXAMINER REARDON: And what you look at in the overcoat is also a fabric.

THE WITNESS: That is right.

TRIAL EXAMINER REARDON: And those two fabrics that you look at are the same fibre?

THE WITNESS: From the outside.

TRIAL EXAMINER REARDON: From the outside?

THE WITNESS: That is right.

TRIAL EXAMINER REARDON: Now, when you were asked the question, Is the fabric in the topcoat the same as the fabric in the overcoat? your answer is that the fabric in the overcoat, the whole material, is wool, a cotton backing, and a lining. Those are the fabrics that are in that article; isn't that right?

THE WITNESS: Yes.

By MR. WILLIAMS:

Q. I understand what it is, but the point I am trying to make is this, that what you call the cloth in one coat is different from the cloth in the other coat.

A. Yes.

TRIAL EXAMINER REARDON: What do you understand by the word "cloth"?

THE WITNESS: Judge Williams is talking about the outer fabric.

TRIAL EXAMINER REARDON: Read that last question of Mr. Williams.

(Last question read.)

TRIAL EXAMINER REARDON: What do you understand by Mr. Williams' use of the word "cloth"?

THE WITNESS: He means that part of the coat which is outside, the very outside of the garment. I am talking about the whole thing, that (indicating), as distinguished from what you have been talking about here. This is what he talks about as the fabric (indicating), and this is the topcoat (indicating).

TRIAL EXAMINER REARDON: Just the word "cloth"?

THE WITNESS: That is what it refers to (indicating).

TRIAL EXAMINER REARDON: That is, the outside of the coat?

THE WITNESS: Yes, sir.

TRIAL EXAMINER REARDON: And that is the same thing, as the topcoat, isn't it?

THE WITNESS: No.

TRIAL EXAMINER REARDON: What is the difference, now? You are speaking about the outside?

MR. WILLIAMS: I am not speaking about the outside.

TRIAL EXAMINER REARDON: Wait a minute. I am trying to get a definition of the word "cloth." I want to know what he means by the word "cloth" in order to see what is different.

Now, that is a very simple proposition. What do you refer to as the cloth in the topcoat? What does the word "cloth" mean?

THE WITNESS: The fabric from which the garment is cut.

TRIAL EXAMINER REARDON: What is the material of the Alpaca coat? Do you know?

THE WITNESS: A mixture of hairs and wool.

TRIAL EXAMINER REARDON: Yes. And now what is the cloth in the overcoat

THE WITNESS: The fabric from which the coat is cut.

TRIAL EXAMINER REARDON: And what is that?

THE WITNESS: The same blend plus a cotton backing. The same face plus a cotton backing.

By MR. WILLIAMS:

Q. The face and the cotton backing constitute the cloth?

A. That is right.

TRIAL EXAMINER REARDON: All right; we know what he means by cloth in both cases.

By MR. WILLIAMS:

Q. Now, I understood you to say that it was possible to make an overcoat out of identically the same materials that you make the topcoat from, but the overcoat would be heavier than the topcoat?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Therefore, it is not essential to use a different fibre in order to get an overcoat—a heavier coat than you use in a light coat.

A. That is right.

Q. So, therefore, it is not essential, then, to use a cotton backing to make an overcoat.

TRIAL EXAMINER REARDON: I think that is a manufacturing question.

THE WITNESS: Yes, but there is a reason for the cotton backing.

By MR. WILLIAMS:

Q. I am not asking you for the reason.

TRIAL EXAMINER REARDON: Just a minute.

Off the record.

(Discussion off the record.)

TRIAL EXAMINER REARDON: Now, we will go ahead.

By MR. WILLIAMS:

Q. See if I understand you correctly. Is this a resume of your statement: The primary difference between the topcoat and the overcoat is a matter of weight—

A. And construction.

Q. —and construction.

It is not necessary in order to create a heavier weight to use a different fabric than that contained in the lighter weight.

A. No.

Q. Sometimes it is done?

A. Yes.

Q. All right. I suppose that is where the essential difference comes. You spoke of the primary difference. Have you any others?

A. Will you finish the question? Suppose what?

Q. What you said in your direct examination; the primary difference between the overcoat and the topcoat is weight and construction.

A. That is right.

Q. What other difference is there?

A. Well, the way it is put together. One might be knit; one might be woven.

Q. Well, I mean, that is the essential.

A. Well, essential and primary are pretty nearly the same words, aren't they?

Q. You are running the two things together. You say the construction and fibre content.

A. I am afraid you have confused me completely. I don't know what you mean.

Q. You stated the primary difference was weight and construction. What is the secondary difference?

A. Would you rather I say that the first difference is a matter of weight and the second a matter of construction?

Q. I am trying to find out what you said.

A. Well, make it the first is a matter of weight and the second a matter of construction.

Q. Now, you speak of it being customary in the trade to use the same name to cover two articles of different, what I would call, fibre content; and isn't it fair to call the topcoat and the overcoat in this case of different fibre content?

A. In my opinion it is not because it is a question of the face of it being exactly the same.

Q. All right, the cloth; cloth difference.

A. You mean taking the whole fabric? There is a difference between them. Certainly there is about 35 per cent of cotton.

Q. All right.

Now, you say it is fair in the trade. How about the public? Does the public come into that picture?

A. Certainly.

Q. Then, do I understand you to say—or, if this is outside of your field, why, just say so, please. It may be. Are you speaking for the public at all?

A. Well, we kind of pride ourselves in taking the consumer angle in the laboratory.

Q. You do that?

A. Yes.

Q. Then, I gather that you approve of the method adopted in this case, of giving a coat made of two different cloth contents the same name, when the additional fibre could not possibly be discovered—reasonably possibly—if I can use that kind of expression—could not be discovered by the customer?

A. I don't see anything wrong with that.

Q. You don't see anything wrong with that?

A. No, sir.

Q. Well, you would say that the customer is entitled to get what he wants, wouldn't you?

A. Absolutely.

Q. And is it commonly understood amongst the public that wool connotes warmth?

A. So does construction. I can give you a rayon blanket that will be as warm as a wool blanket.

Q. I am talking about the public understanding, and the public understands it so, and they buy it that way. You mean to say that the public does not associate wool and warmth together?

A. Oh, yes, they do associate wool and warmth.

Q. Yes.

A. You said it is absolutely necessary.

Q. I did not say absolutely; I said you do it as a matter of fact.

You think, then, that the public is not entitled to know from your advertisement, at least—

A. I did not say the public is not entitled to know.

Q. All right. How is the public to find out?

A. We have a new law that takes effect July 1, 1941, which will cover all those questions. You will have to put a label not only on the coat but on the fabric.

Q. That is beside the point. We have a statement here that the means are put in the hands of retailers to misinform the public. That is one of the charges in the complaint. Now, doesn't this naming of two of these cloths Alpacuna put in the hands of retailers the means whereby they may misinform the public?

A. I can't see where it does.

Q. You can't see where it does?

A. No, sir.

Q. Well, as a matter of fact, you do have whole wool overcoats, don't you?

A. Yes.

Q. And they are generally lined. All wool overcoats are generally lined.

A. I am listening to your question.

Q. A great many of them.

A. Yes.

Q. And this Alpacuna overcoat is lined.

A. Yes.

Q. How would the public know that it has 35 percent cotton?

A. If they want to know they will ask. Nobody in the world would ever say that an Alpacuna topcoat and an Alpacuna overcoat could possibly be exactly the same. There is a weight difference.

Q. I understand the weight difference; but, then, by this method the customer is thrown back on the store to tell them the truth about the coat.

A. Why, certainly.

Q. And he has no other means of doing it.

A. That is right.

Q. You say you are not at all familiar with vicuna?

A. Very slightly.

Q. I don't believe you were asked anything about the meaning of the word "Alpacuna," were you?

A. I don't know whether I was or not.

MR. McCracken: If he was not, it was my fault. I intended to ask him.

THE WITNESS: I think you did.

By MR. WILLIAMS:

Q. Then, you say that this name "Alpacuna" has no implication whatsoever as to fibre content?

A. I don't believe that it has. To me it is nothing but a name and it refers to a quality coat.

Q. I understand that you know actually what that coat is composed of, but I am talking about the word itself.

It does not have any implication of fibre content,—the word itself? Now, disassociate your own individual knowledge of the coat.

A. First, you have to have knowledge of fibres.

Q. Well—

A. Let me finish.

I have a pretty good knowledge of fibres.

Q. Yes.

A. I don't have much knowledge of vicuna.

Q. Yes.

A. I assure you that the people with whom I go buy decent clothes, and I don't think any of them know what vicuna is.

Q. Do they know what alpaca is?

A. Yes, they know what alpaca is.

Q. Wouldn't the "cuna" mean anything?

A. No. Why would half a name mean anything?

Q. The fact that "Alpa" is in there, and "alpaca" is in there would not mean a thing?

A. Not a thing. It is a trade name; that is all it means to me.

Q. It does not mean a thing?

A. No, sir.

Q. Have you any idea how that word was derived?

A. No, sir.

Q. Even knowing fibres as you do?

A. I honestly say I don't know how they got that name.

Q. And you don't have the remotest idea—

A. Of course, if you lead me into it, put two and two together and you get four.

Q. I am asking you, knowing fibres as you do, what would be your understanding of the derivation of the word "Alpacuna"?

A. I wouldn't have any idea. It is a trade name to me.

Q. You don't know how they arrived at the "A-l-p-a"?

A. No.

Q. You don't know where it could have come from?

A. Why, look, Mr. Williams, why stop at the A-l-p-a? Why not A-l-p-a-e?

Q. I am asking the questions, not you, sir. I am asking you—Here is why: Because the common pronunciation is Alpacuna. That word is divided into two: Cuna, c-u-n-a, and Alpa, A-l-p-a. That is the pronunciation universally used here. How would you divide it?

A. That is how I would pronounce it.

Q. Yes.

A. I mean are you trying to put something in my mind.

Q. Knowing fabrics as you do, and knowing that it is not uncommon at all to take fibres—

A. I will give you a very definite answer. Valcuna is a line: "Cuna," according to you, is vicuna. That is right, isn't it?

Q. I am asking the questions.

A. All right. I want to show you the reasoning you are trying to give me.

Q. The implication is, however, that Alpacuna—

A. No; I said Valcuna. Well, there isn't any alpaca in it, and there isn't any vicuna in it. It is plain mohair and wool. Now, why should I think it is made of Val something and vicuna?

Q. I did not ask you what you think. I am asking what that word means to you.

A. Alpacuna is a coat which I have known for a great many years as a serviceable coat.

Q. I am talking about the meaning of the word itself.

A. It has no meaning. It is a trade name.

Q. How would a man arrive at a particular trade name?

A. That is up to him.

Q. You have no idea whatsoever as to how they obtained the first part of the word "Alpacuna"?

A. That is not my job. My job is not to pull apart every trade name that comes to us.

Q. I understand, but I am asking you now in that box—you have been brought in here not by us—I am asking you as a yarn man, as a man dealing with fibres, what is your idea as to the derivation of the A-l-p-a in the word "Alpacuma"?

A. I don't know that there is any.

Q. You don't have any idea?

A. No.

Q. You have never associated it with anything?

A. I never have from the day I first saw the coat.

Q. I see. Although it has been frequently the practice to use the names of fibres, or parts of the names of fibres, in connection with the naming of coats.

A. I don't know that that is so.

MR. McCracken: There is no evidence to that effect.

MR. WILLIAMS: Well, he is familiar with the principle. I am talking about the principle.

MR. McCracken: I don't know that he is familiar with it.

By MR. WILLIAMS:

Q. Don't they use words that are taken partly from the fibre used in the articles?

A. Maybe they do. I don't know. You are trying to make me say that Alpacuma is a made-up word. I don't know that it is.

Q. Don't you know—aren't there any number of things on the market that have the fibre as part of the name? Don't you know that to be a fact?

A. I wouldn't say "yes," because I don't know.

Q. You don't know. That is the answer.

A. I told you that long ago. I was not in their confidence when they made the word up.

Q. I did not ask you that. I asked you if it is not a common practice.

A. I wouldn't say it is a common practice.

Q. But it is a practice.

A. You are telling me.

Q. Is it a practice?

A. You told me it was, and I have to take your word for it.

Q. Isn't it practiced considerably?

A. I don't know.

Q. You don't know?

A. No. ?

Q. You are testifying as a witness and you say you don't know that to be a fact?

A. Yes.

Q. In a great many cases?

A. Yes, sir.

Q. All right.

Now, you spoke of Fashion Park clothes and Society Brand clothes. You don't mean to give the impression—

A. I don't remember mentioning those.

MR. WILLIAMS: All right, strike that, please.

By MR. WILLIAMS:

Q. You would not, I assume, classify Fashion Park clothes and Society Brand clothes along with the word "Alpacuna" as being the same thing?

A. Fashion Park is a house name. Alpacuna is a house name.

Q. Exactly so. Alpacuna is a house name?

A. Yes. It belongs to Jacob Siegel. It represents two coats—three coats.

Q. Do you think the public, when they see "Alpacuna" know that it is a Jacob Siegel article? Would the public know that?

A. When you buy an automobile, you don't know whether there are Timken bearings in it.

Q. I am asking you—

A. I don't think the man on the street knows who manufactures the coat.

Q. Do you think the man on the street would think Alpacuna was a house name?

A. Absolutely.

Q. The man on the street would?

A. Yes.

Q. And not a brand of clothes?

A. That is what I mean. It covers the product of a given house.

Q. Then, I want to ask you one more question on that, and I will finish.

You want to say that Fashion Park clothes and Society Brand clothes—we call them brands—means exactly the same thing to the public as Alpacuna, or vice versa?

A. Well, do you know—wait a minute. I want to clear this up. Society Brand is a name belonging to Alfred Decker & Cohn.

Q. Exactly.

A. All right. Alpacuna is a name belonging to Jacob Siegel. What is the difference?

Q. Isn't it a fact that Fashion Park clothes are understood to be a whole line of house clothing?

A. Yes.

Q. Do you want to say right here and now that the public understands that Alpacuna is the same thing?

A. Yes, it is exactly the same thing.

Q. That it is a house name just like Fashion Park?

A. Absolutely, sir.

Q. Do you say that now after talking with anybody or—

A. That is my own conclusion.

Q. I see.

A. As I told you before, we try to do our work over there from the consumer angle.

Q. And taking the consumer angle, then you say—you are prepared to say, of course, that the public would

not imply from that word "Alpacuna"—I guess I shouldn't ask you—do you represent the public at all?

A. No, only that in our examination of merchandise we try to do our job from the consumer angle.

Q. Are you able to give a consumer opinion?

A. Only as a consumer.

Q. Not by knowing the public?

A. No. No. I mean, I don't contact the public.

Q. Take a look at that ad, and what would you say a person on the street would have a right to understand was the fibre content of that article?

MR. McCracken: Referring to—

MR. WILLIAMS: I am referring—I beg your pardon. This is Commission's Exhibit 114.

A. It says, "Duplicates the natural coat of the animals from which hairs and wools are taken." According to that, to my mind, the outer part—let us start with the animal. The animal has a hide. The outer part is the wool. You have been using "wool" in general terms. You have been using it all morning and afternoon in general terms.

By MR. WILLIAMS:

Q. Yes.

A. This fabric, therefore, must have something to represent the hide and something to represent the outer hairs.

Q. You don't agree with some of the other representatives, then, as to this. Do you mean to say that you can get out of that—

A. It says "Duplicates the natural coat of the animals." Now, there is only one way to duplicate it. The natural animal begins with the hide.

Q. Well, if you are going to carry that to the ultimate conclusion, then you would have to have leather, wouldn't you, if you are going to make that deduction?

A. You asked me what I get out of it. Mrs. Richardson told you this morning that she thought that ad did not read clearly. I am trying to explain it to you from a technical angle.

Q. From past experience?

A. I am trying to give you my own opinion. That is what you asked.

Q. I am sorry. I meant to ask you for a consumer opinion, but I had to withdraw that.

Then, as I understand it, you are not qualified to give consumer opinions. You have just given your personal opinion all through this case.

A. I have given you the opinion—when you asked my personal opinion I have given you my personal opinion; otherwise, I answered from the experience we have had from our Bureau of Standards. And looking at materials from the consumer angle I think that I can fairly well understand what the consumer wants.

Q. What he wants. I understand that. But you are not really qualified.

A. You will have to decide whether I am. I can only tell you my qualifications, and you will have to decide whether I am qualified.

Q. Your branch of the service is not—

A. Consumer contact? No.

Q. —consumer contact.

MR. WILLIAMS: All right. That is all.

Re-direct-examination.

By MR. McCracken:

Q. You have in front of you, Mr. Potsdamer, an advertisement there giving various brands, haven't you?

A. Yes sir.

Q. Just read what those brands are.

A. Fashion Park—

TRIAL EXAMINER REARDON: Is that an exhibit?

MR. McCracken: I do not believe it is. No, I do not believe that has been marked. I guess I better have that marked.

TRIAL EXAMINER REARDON: All right, mark it Respondent's Exhibit 45, for identification.

(The paper was marked for identification "Respondent's Exhibit 45, for identification.")

MR. McCracken: And then mark another 46.

(The paper was marked for identification "Respondent's Exhibit 46.")

MR. McCracken: And mark that 47.

(The paper was marked for identification "Respondent's Exhibit 47.")

By MR. McCracken:

Q. Now, I show you Respondent's Exhibit 45 and call to your attention the fact that it refers to certain names? What are those names?

A. Fashion Park, Alpacuna, Stanwood, Shradmoor, and Worsted-Tex.

Q. What do those names stand for?

A. Fashion Park is the name of a firm in Rochester—the house name of a firm in Rochester. Alpacuna we are discussing here. Stanwood I don't know. Shradmoor I don't know. Worsted-Tex I don't know.

Q. Each of them is a house name, is it?

A. I would presume so from the association.

Q. They are all used in the same manner?

A. That is right.

Q. I show you—

TRIAL EXAMINER REARDON: All used for the same kind of article?

THE WITNESS: Yes, sir; suits and topcoats.

By MR. McCracken:

Q. I show you another one, Respondent's Exhibit 46, which is headed "Five Great Names in Topcoats," and those five names are what?

A. Benchley, Walter Dunlop, Cougar, Royal Pacer, and Alpaca.

Q. All used in the same relation, the same manner?

A. Yes, sir.

Q. And all dealing with topcoats.

Do you, by the way, happen to know the Cougar topcoat?

A. No, sir.

Q. Do you know what a cougar is?

A. It is some sort of lion.

Q. It is a mountain lion. Do you know whether that topcoat is made out of mountain lion skin?

A. \$27.50? I wouldn't think so.

Q. I show you Respondent's Exhibit No. 47, and call to your attention some Hart, Schaffner & Marx tailoring together with some other firms. What does that say down there?

A. "Also suits and overcoats tailored by Hart, Schaffner & Marx, G.G.G., Clipper Craft, Crofton and Alpaca."

Q. Alpaca is used there in the same classification as what?

A. As Hart, Schaffner & Marx, which is a cutting house for clothing; the G.G.G. line, Clipper Craft, and Crofton.

Q. They are all house names?

A. Yes.

TRIAL EXAMINER REARDON: Of what?

THE WITNESS: Of stores.

By Mr. McCracken:

Q. The retail store of Jordan-Howe Company, where are they?

A. New Haven, Conn.

Mr. Williams: And what is the date of that?

THE WITNESS: October 9, 1940. October 18, 1940.

TRIAL EXAMINER REARDON: What is October 18?

THE WITNESS: The second.

Mr. McCracken: Exhibit 46.

THE WITNESS: 46. And 45 is October 11, 1940.

TRIAL EXAMINER REARDON: Do you know how long those names have been used?

THE WITNESS: These names in the ads?

TRIAL EXAMINER REARDON: Yes. One, two, three, four years?

THE WITNESS: Fashion Park has been used for many years. Worsted-Tex has been used for many years. G.G.G. has been used for many years. I don't know exactly how long Clipper Craft has been used.

Mr. McCracken: Two or three years?

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: Two or three years?

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: Take the other. Exhibit 47.

THE WITNESS: This is 47.

TRIAL EXAMINER REARDON: Now, take the other. What is the other?

THE WITNESS: I don't know anyone but the Apacuna on that. Benchley—

TRIAL EXAMINER REARDON: What exhibit is that?

THE WITNESS: 46.

TRIAL EXAMINER REARDON: How long has that one been used?

THE WITNESS: Well, there is only Alpacuna on there that I know.

TRIAL EXAMINER REARDON: Oh, I see. All right.

Re-cross-examination.

By MR. WILLIAMS:

Q. Of course, you don't know that that name has been used in that way prior to this particular advertisement. You are not familiar with any prior advertisements?

A. Of these companies?

Q. No, in that form that they were given there.

A. Of these companies?

Q. Yes.

A. I don't know anything about them.

Q. Exactly.

MR. WILLIAMS: That is all.

MR. McCracken: That is all. Thank you very much.

MR. WILLIAMS: By the way—just one minute.

By MR. WILLIAMS:

Q. You used a while ago the words "family name."

MR. McCracken: House name.

A. I said it both ways.

By MR. WILLIAMS:

Q. How is a family name—have you any knowledge as to how a family name is created in the public mind?

A. By advertising.

Q. Yes. Then do I understand you again to say that the public would not differentiate Fashion Park and Society Brand from the type of name we have here, Alpacuna—do you think the public—

I beg your pardon. I guess I shouldn't ask you any questions about the public. I withdraw it.

MR. WILLIAMS: Please strike that.

* * * * (N. T. p. 1040.)

SOL WEINBERG was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. State your name for the record, please.

A. Sol Weinberg.

Q. Where do you live, Mr. Weinberg?

A. In Elkins Park, Philadelphia.

Q. What is your profession?

A. I am a chemical engineer; that is, a specialist in textiles.

Q. How long have you been engaged in that specialty?

A. Some 26 years.

Q. You graduated from what institution?

A. Why, several institutions. If I may—

Q. Yes, tell us.

A. Pennsylvania, Penn State, Temple, M. I. T.—

TRIAL EXAMINER REARLON: Massachusetts Institute of Technology?

THE WITNESS: Yes.

By MR. McCracken:

Q. Yes.

Do you hold a degree from there?

A. Yes.

Q. From the Massachusetts Institute of Technology?

A. Yes.

Q. Now, have you been a research expert in fabrics for several concerns?

A. Well, my whole—the answer to that is “Yes.”

Q. Have you ever done any work for the Federal Trade Commission?

A. Yes; I have given some testimony for the Federal Trade Commission.

Q. What is your present concern?

A. Industrial By-Products & Research Corporation, consulting chemical engineers, of which I am president.

Q. And you are referred to by what kind of houses? Manufacturing companies?

A. Manufacturing—first of all, by purchasers of raw materials. We serve as consultants to purchasers of raw materials. We serve as consultants to manufacturers of fabrics. We serve as consultants to manufacturers of garments. And we serve as consultants to retail stores assisting them in their purchasing problems.

Q. Did you have anything to do with the construction, the original construction, of the cloth from which the Alpaca overcoat is made?

A. I plead guilty, sir, to the original development of the Alpaca fabric that caused all this fuss.

Q. You, yourself, got it out, did you?

A. Yes. And I am glad of the opportunity to explain some of the confusion that has arisen.

Q. All right, sir, will you tell us how it is made, and describe the fabric to us, and when it was invented, and so on.

A. The fabric was originally made for Continental Mills, that were manufacturers at the time. We tried to

achieve perfection in fabrics. In other words, we wanted to combine the ultimate in warmth and in quality.

MR. WILLIAMS: Now, if Your Honor pleases, I do not want to be rude, but I do not see the relevancy of this matter here at all. It is not a question about their articles being good, bad, or indifferent. They may be the finest articles on the market, but how they came to produce them is not at all relevant or material. The sole thing is how they put them on the market and advertised them.

TRIAL EXAMINER REARDON: There won't be much of it. I agree with you ~~it is not~~ material to the direct issue, but—

MR. McCracken: This is just a little background for the Commission as to what we are talking about.

THE WITNESS: I think there is a great deal of misunderstanding about some of the fabrics, and I think something ought to be said about it.

We first made the fabric—attempted to make it out of an all-animal fibre content. In other words, the back also was made of an all-worsted back.

MR. WILLIAMS: Now, if Your Honor please, of course I have no objection to the information, except we have already run up a pretty big record, and I do not think this is at all material.

TRIAL EXAMINER REARDON: He may proceed with a few sentences to let the Commission have a picture of the thing.

THE WITNESS: We have attempted in the fabric to get a close density of the hairs on the surface, and in order to accomplish that it was necessary to use a fine yarn on the back, because the finer the yarn on the back the more dense would your surface be, and the more wear you would get out of it, and the more

warmth you would get out of it. Now, there are not any worsted yarns that are spun as fine, or as thin—when I say “thin” I mean thin in diameter—as cotton yarns. Therefore, you could not proceed to produce as dense a face with a thicker yarn as you could with a thinner yarn, and we were forced to use cotton—not because we chose to use it, but we were forced to use it.

MR. WILLIAMS: You say “face”; you mean the backing.

THE WITNESS: In order to—to go over that again, Mr. Williams, in order to produce a dense face you have to use a thin yarn in the back, and when you can't get a thin yarn out of worsted you have got to go to some other fibre.

It might be interesting to know that at Continental Mills at the time we made many fabrics out of all wool face and all wool backs for less per yard than this fabric. It did not connote a cheapness at the time, because it has always been an expensive cloth. That is because of that certain construction.

There was an effort made to produce the ultimate in perfection. I do not think Mr. Siegel or anybody else would have gotten excited about it and gone in for all this advertising if it was not an unusual development at the time. I do not claim that it was a discovery. It was not at all. As a matter of fact, we borrowed it from the existence of the natural animal, because the nearer we got to perfection in our fabric the more it looked like an animal.

By MR. McCracken:

Q. Now, is it a fact that after you began to develop this cloth others imitated it?

A. As a matter of fact, it is the most copied fabric for overcoating and topcoating in the entire market.

Q. And was yours the first commercially?

A. As far as I know, ours was the first.

Q. Commercially?

A. Commercially.

Q. I suppose cotton and wool have been mixed for thousands of years, haven't they?

A. Well, that has been done.

I had hoped to have charts here. I know that a court of this kind is a fact-finding organization, and I prepared charts to show the difference between contaminated fabrics containing cotton and fabrics that are made intently with cotton. In the contaminated fabrics the cotton is combined together with the wool and it is a conglomerate mass of the whole thing.

MR. WILLIAMS: I still call attention to the elaborateness of the explanation. I have no objection otherwise, except for the length of the record.

TRIAL EXAMINER REARDON: Well, I do not think it will lengthen the explanation.

THE WITNESS: I am attempting to clarify.

TRIAL EXAMINER REARDON: I would rather let the witness go freely so we would get the best explanation.

MR. WILLIAMS: I merely call attention to it.

THE WITNESS: There has been only confusion, and if I can only clarify it it might help.

Now, this fabric is altogether different than taking and putting in cotton into a hopper with wool and getting out yarn. This is made of two separate yarns: One is virgin stock of all-animal fibre for the face; the other, by intent, is a cotton backing, because, other than silk, we could not use anything that is spun as fine.

By MR. McCracken:

Q. Now, tell us the difference, Mr. Weinberg, if any.

between the construction of the cloth from which the overcoat is made and that from which the topcoat is made.

A. There is all the difference technically, from a textile angle, that you can have in two cloths. The yarns of the topcoat are finer, and they are made in a loom.

TRIAL EXAMINER REARDON: They are made of the same fibre?

THE WITNESS: They are made principally of the same fibre, with the exception of the cotton backing.

TRIAL EXAMINER REARDON: The topcoat?

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: The cotton backing of the topcoat?

THE WITNESS: No. With the exception of the cotton backing.

TRIAL EXAMINER REARDON: That is in the overcoat.

THE WITNESS: That is in the overcoat.

TRIAL EXAMINER REARDON: Yes.

THE WITNESS: Now, there is spun finer yarns and they are made on a loom.

TRIAL EXAMINER REARDON: That is, the topcoat—

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: —is made of wool—

THE WITNESS: Of wool, mohair, and alpaca.

By MR. McCracken:

Q. Is that what you call a woven cloth?

A. It is a woven fabric. It is a different construction altogether. It takes different machinery. As a matter of fact, Continental had to invest about \$250,000 to buy the machinery and produce this fabric.

TRIAL EXAMINER REARDON: Referring to the topcoat?

THE WITNESS: Yes, the topcoat.

TRIAL EXAMINER REARDON: Are you going to put these in?

MR. McCracken: Yes. Let us do it now. Let us get them in evidence now.

TRIAL EXAMINER REARDON: That will be 48, and that is the topcoat fabric that he has been talking about.

(The piece of fabric was marked for identification "Respondent's Exhibit 48.")

By MR. McCracken:

Q. Now, then, having described the topcoat fabric, which is Exhibit 48, which you say is a woven fabric—

A. Yes; different construction from the overcoat, made of finer yarns.

Q. —will you now describe the fabric which you have before you from which the overcoat is made?

TRIAL EXAMINER REARDON: Let that be marked for identification as Exhibit 49.

(The piece of fabric was marked for identification "Respondent's Exhibit 49.")

MR. McCracken: We are also going to have marked for identification Respondent's Exhibit 50.

THE WITNESS: That is a lighter weight summer topcoating, so to speak; also Alpaca, made of similar fibres.

(The piece of cloth was marked for identification "Respondent's Exhibit 50.")

By Mr. McCracken:

Q. Then I am going to put before you Exhibit 49, from which you say the Alpaca overcoat is constructed, and, first, I am going to ask you if that is a woven fabric.

A. That is a knitted cloth. That is altogether different machinery.

TRIAL EXAMINER REARDON: And this has a cotton backing?

THE WITNESS: This has a cotton backing. There it is (indicating). Now, can you tell that? There is our fabric.

TRIAL EXAMINER REARDON: The cotton fabric is on?

THE WITNESS: Yes.

MR. WILLIAMS: That is part of the cloth. That is what I have been trying to point out all morning.

THE WITNESS: No one denied that. It is in the cloth.

By Mr. McCracken:

Q. Exhibit 49, you say, is a knitted cloth?

A. Is a knitted cloth.

Q. And on the outside—

A. And is made from all-animal fibre yarns for the face, composed of Alpaca, mohair, and wool, and cotton yarns for the back.

Q. Yes, and is a heavier cloth.

A. And weighs about 10 ounces to the yard more than the topcoat does. The size of the yarn is different. The construction of the fabric is different. It involves a different industry, almost.

TRIAL EXAMINER REARDON: The identity of the cotton back is separate from the material in the rest of the coat?

Sol Weinberg—Direct.

TRIAL EXAMINER REARDON: Any objection?

MR. WILLIAMS: No; except the general objection.

TRIAL EXAMINER REARDON: Respondent's Exhibits 45 to 50, inclusive, will be received in evidence.

(The documents and pieces of fabric heretofore marked for identification "Respondent's Exhibits 45 to 50," both inclusive, were received in evidence.)

By MR. McCracken:

Q. Mr. Weinberg, I am now going to show you the document identified as Respondent's Exhibit 51 and ask you what it is.

A. This is a topcoat.

Q. Alpacuna topcoat?

A. This is an Alpacuna Topper, so says the label, and

I suppose that is what it is.

Q. It is only half lined, isn't it?

A. Quarter lined.

Q. I ask you what Exhibit 52 is?

A. That is an overcoat.

Q. Alpacuna?

A. Alpacuna, full lined.

Q. That is the coat made of—

A. That is the first developed.

Q. And that is made out of the cloth which is marked Exhibit 49?

A. Yes, sir.

Q. Just as the topcoat is made out of the cloth marked Exhibit 48?

A. Yes, sir.

TRIAL EXAMINER REARDON: In other words, Exhibit 52 is made out of Exhibit 49; and Exhibit 51—

MR. McCracken: Out of 48.

TRIAL EXAMINER REARDON: —is made out of the cloth, Exhibit 48.

By MR. McCracken:

Q. Now, what would you say was the relative difference of the weight between the topcoat and the overcoats, swinging one in each hand and measuring them as best you can?

A. Well, there must be twice the weight in the overcoat as in the topcoat, at least.

MR. McCracken: Mr. Reardon, would you like to try it?

TRIAL EXAMINER REARDON: (After holding coats in his hands): Oh, yes, more than twice the weight.

By MR. McCracken:

Q. Holding these two coats up side by side—

Would you hold one of them, Ed, please? Let us put on one each. We will be models (putting on coats).

I ask you whether anyone could possibly mistake one for the other.

A. I don't see how you could, sir.

Q. You would know it is a different garment; wouldn't you?

A. Yes.

Q. Different weight and different construction.

A. Even if the colors were the same, you could see a bulkiness about that one (indicating) that you don't see about this one (indicating).

TRIAL EXAMINER REARDON: The bulkiness in the overcoat, Exhibit 52.

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: That you don't see in
51.

THE WITNESS: Yes.

Even if the fibre content in the face was the same, still there is a difference in the appearance.

THE WITNESS: Exactly. It is not intermixed with the yarn in the front.

TRIAL EXAMINER REARDON: All right.

THE WITNESS: That is individual yarns, and it is not concealed: it is exposed.

By MR. McCracken:

Q. Now, then—

A. It is not blended, in other words.

MR. WILLIAMS: Excuse me. Did I understand you to say the cotton is exposed?

THE WITNESS: Yes.

MR. WILLIAMS: I want to be sure.

By MR. McCracken:

Q. I show you Exhibit 50 and ask you what it is.

A. That is a light weight topcoating. That is intended for light summer—or, I should say, evening use. It is a woven cloth. It weighs about 16 ounces, 15 to 16 ounces to the yard, as contrasted with the 18 ounces of the other topcoating. It is woven. It is made of alpaca, mohair, and wool.

Q. And no cotton backing?

A. No cotton backing.

Q. And what is it called?

A. That is called "Alpacuna Imperial." The other is called "Alpacuna Fabric" for overcoating; and one is "Alpacuna Topper" for topcoating—all Alpacuna.

Q. And all three of them have the same kind of animal hairs on the outside surface?

A. They do, sir.

Q. Wool, alpaca, and mohair?

A. Yes.

And, incidentally, if I might add, sir, this is a common practice in the textile as well as the linen industry.

Sol Weinberg—Direct.

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Q. Now, I am going to go a little further, now that you have shown us the cloth—

TRIAL EXAMINER REARDON: Off the record.

(Discussion off the record.)

By Mr. McCracken:

Q. I don't know that we will mark these exhibits, because they are too good to leave, but I am going to show you three garments—

TRIAL EXAMINER REARDON: Let us go off the record a minute.

(Discussion off the record.)

Mr. McCracken: Mark that coat Exhibit 51.

(A coat was marked for identification "Respondent's Exhibit 51.")

TRIAL EXAMINER REARDON: Exhibit 51, for identification, is what?

Mr. McCracken: Exhibit 51 is the topcoat.

(A coat was marked for identification "Respondent's Exhibit 52.")

TRIAL EXAMINER REARDON: And 52 is what?

Mr. McCracken: Fifty-two is the overcoat.

And finally the Imperial.

(The coat was marked for identification "Respondent's Exhibit 53.")

Mr. McCracken: At this time, if Your Honor please, I offer in evidence those three fabrics, which have been marked for identification Respondent's Exhibits 48, 49, and 50; and I also offer in evidence Respondent's Exhibits 45, 46, and 47, which are the advertisements.

By MR. McCracken:

Q. The same difference exists, does it not, just as strikingly between Exhibit 53, which I now have on, the Imperial, and the overcoat?

A. I couldn't distinguish them, no.

Q. Sir?

A. There is not the same difference.

TRIAL EXAMINER REARDON: That was marked 53, was it?

MR. McCracken: Yes; 53.

By MR. McCracken:

Q. Now, Mr. Weinberg, you were good enough to produce here another article, and I ask you—

A. I am not prepared for this article. I want to show that afterwards.

MR. McCracken: All right; put them away.

By MR. McCracken:

Q. Now, those three coats are, are they not, the standard Alpacuna topcoat, overcoat, and Imperial, which are sold under that name?

A. That is right.

Q. And advertised under that name?

A. Yes, sir.

Q. You are familiar with that name?

A. I am, sir.

Q. What does that name mean to you?

A. Purely a trade name.

Q. Did you have anything to do with inventing the name as well as the cloth?

A. I had nothing to do with coining the name of that cloth.

Q. And do you have any idea how the name was arrived at?

A. I haven't the slightest idea.

Q. Is there any other implication in your mind, as you look at that word, other than that it is a trade name?

A. None whatever.

Q. Now, I am going to ask you if you are also familiar with the use of trade names and trade marks and slogans accompanying the same.

A. I naturally am, because almost every development we make is given a trade name. I would naturally be familiar with them.

Q. Are you familiar with the fact that there are many other trade names applying to overcoats that end in u-n-a, e-u-n-a, and k-u-n-a?

A. There are too many to mention.

Q. You have heard some of them—mentioned in this case?

A. Yes, I have, and I have seen them on the market, and I have analyzed most of them. I know of so many, and there are still many more cropping up every season.

Q. Do they bear any similarity to the garments described by those names?

A. As a matter of fact, most of them seem to describe a cotton-backed coat of a similar type.

Q. Mr. Siegel's has had many imitators, hasn't it?

A. Well, I would say that it is the most widely imitated garment in the men's industry.

Q. But in construction and in name?

A. In construction and in name and most of them at a cheaper price. There are many imitations of that kind.

Q. Are you familiar with the slogan "There is only one Alpacuna overcoat"?

A. I am, sir.

Q. What does that mean to you?

A. That there is only one coat sold under that name—one garment sold—one type of line sold under that name.

Q. Does that mean that a man owning that trade name

can apply it to a topcoat and also to an overcoat; or, is it a common practice for a house name to be applied to several garments?

A. It is very common to have a line when it is well established—the name, when it is well established, to be given to a whole line of garments.

Q. Are you familiar with the alpaca animal?

A. I am, sir.

Q. And alpaca cloth?

A. I am, sir.

Q. Sometimes called what else?

A. Sometimes called llama; sometimes even called guanaco.

Q. What is mohair?

A. Mohair is the fibre from a goat, a goat that originally came from Angora, Asia Minor.

Q. That is different from the alpaca?

A. Oh, yes. The South American cousin to the camel, which that whole line of animals are called, starting with the llama, and the alpaca, and the guanaco, and the vicuna, which, of course, is rare, are all different from the angora, that I just mentioned.

Q. One is a goat and the other is a camel, isn't it?

A. Well, it is called the South American cousin to the camel. That is how it is defined technically. You can't call them goats, because they are not of that genus.

Q. Now, you know what the vicuna is, of course?

A. Yes. I haven't ever seen one. We can't keep them in captivity. I have read about them.

MR. WILLIAMS: I did not catch that.

THE WITNESS: We can't keep them in captivity.—the vicuna animal. I heard it stated in this court that there were two of them at the World's Fair, but I haven't seen them. I suppose there were. I wouldn't question it. But I don't know of a zoo that has any, I have discussed—

MR. WILLIAMS: I think we are getting into—that does not prove anything. I know a lot of things you don't.

By MR. McCracken:

Q. Now, then, are you familiar with the amount of hair of that animal, if any, which is brought into the United States?

A. Well, I don't know how much of that fibre is in America.

MR. WILLIAMS: That is the answer.

THE WITNESS: I think that there is very little here.

TRIAL EXAMINER REARDON: Well, you haven't seen any, have you?

THE WITNESS: I haven't seen any. It is not offered in the market, in the general open market, it is so rare. I am always buying fibres in the market for the purpose of making fabrics, and I can't buy any.

TRIAL EXAMINER REARDON: You are familiar with the market, and you can't buy any?

THE WITNESS: I can't buy any in the market.

By MR. McCracken:

Q. Do you know a cloth called vicuna finish cloth?

A. That has been a name used, yes.

Q. That is the secondary meaning, is it, for that word?

A. It means a soft finish fabric and hasn't any definite indication as to its fibre content.

Q. You heard Mr. Degerberg on the stand this morning?

A. Yes, sir.

Q. And you saw him produce, did you not, a sample of a cloth, marked Respondent's Exhibit 42?

A. Yes, sir.

Q. He testified to that as vicuna finish.

A. Yes.

Q. Are you familiar with that finish?

A. Yes, I have seen this.

Q. And it is what kind of a finish? How would you describe it?

A. It is a soft, delicate face finish, what we call a teased or nap finish.

Q. You have described alpaca. Are you familiar with the yarn that is sold as commercial alpaca?

A. I have known prior to our investigations with alpaca fibre of an alpaca yarn, most of which did not contain alpaca at all.

Q. What did it contain?

A. It contained cotton, linen, and in some instances, horse hair, or mohair, and it did not contain alpaca at all.

Q. Now, when you come to buy the real alpaca hair—it comes up from South America, I believe?

A. Yes.

Q. You have bought that, have you?

A. Yes.

Q. Is that pure alpaca hair?

A. I have not ever been able to find pure alpaca when you buy alpaca.

Q. What do you buy?

A. You buy what you call Araqueppa. It comes from Peru.

MR. WILLIAMS: If Your Honor please, unless he knows of these things, I object.

THE WITNESS: I am talking from what I know now, not what I speculate.

TRIAL EXAMINER REARDON: He bought this, he said. He is talking about commercial alpaca.

THE WITNESS: Commercial alpaca.

Sol Weinberg—Direct.

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TRIAL EXAMINER REARDON: He is telling us what it is.

THE WITNESS: Commercial alpaca contains a mixture, and you can't separate them.

By Mr. McCracken:

Q. The mixture is made up of what?

A. The mixture contains some llama, some alpaca, and guanaco, and very often I, myself, have opened bales of Araqueppa alpaca and found a little vicuna in it. You wonder how it happens. Those skins are very small. They can't do anything with them. So they throw them in with the rest.

TRIAL EXAMINER REARDON: Is this alpaca that you have described—is that principally real alpaca and, you might say, these other things due to bad handling?

THE WITNESS: Well, I would say in an analysis you might find as much as almost—we will say half of it might be.

TRIAL EXAMINER REARDON: The other would be what?

THE WITNESS: The other might be llama, and there might be 10 or 15 per cent guanaco in there.

TRIAL EXAMINER REARDON: I see.

By Mr. McCracken:

Q. Is that because of the careless packing among the natives of South America?

A. It is both that and the fact that there has been a lot of interbreeding. These are animals that are herded together and the resultant fibre is not a pure fibre. The llama is a bigger animal than the alpaca.

TRIAL EXAMINER REARDON: How about the prices? Are the prices different? In other words, is that mixture that you commercially buy as alpaca occasioned by any desire to substitute a higher-priced material for a lower-priced material?

THE WITNESS: Not at all. You can sometimes buy llama by itself—

TRIAL EXAMINER REARDON: Yes.

THE WITNESS: —but that goes on special order, and it is a very rough fibre, the coarsest of the lot.

TRIAL EXAMINER REARDON: Not alpaca?

THE WITNESS: No. You buy Araqueppa alpaca, which covers the blend.

TRIAL EXAMINER REARDON: I see.

THE WITNESS: And the only difference in price on that fibre is the difference in color. The lighter shades cost more money than the darker shades.

By Mr. McCracken:

Q. What you are trying to say, if I understand you correctly, is that it is utterly impossible to commercial buy from the South American exporter pure alpaca hair.

A. Absolutely.

Q. With that there is always an intermixture of several other hairs.

A. That is right.

Q. And in that mixture you sometimes find vicuña in the bale.

A. Yes.

Q. And guanaco?

A. No. Guanaco would be—that is an animal that is not wild. The hair from the guanaco is shorn, as compared with getting the hair from the dead animal.

Q. And sometimes you get llama hair?

A. Oh, yes; you get considerable llama.

Q. So it is a commercial and physical impossibility, if I understand you correctly, to purchase pure alpaca hair?

A. You are right, sir.

TRIAL EXAMINER REARDON: We will take a short recess for about 3 minutes.

(There was a short recess taken.)

By MR. McCracken:

Q. I just want to ask one more question.

Can you give us any idea as to the poundage of vicuna, real vicuna hair, that comes into this country in a year?

A. The only information I can give you is the quotation from the Commerce Department. I have a booklet over there that the last shipment was 2,000 pounds. It was a two-year supply. Two thousand pounds, by the time it is secured and by the time it is purchased, is not an awful lot of material, as compared with the millions of pounds of other fibres. When that fibre is that scarce, 2,000 pounds for two years, it is a non-commercial fibre. We don't purchase it in the market at all because we can't buy it.

MR. McCracken: Cross-examine, Mr. Williams.

TRIAL EXAMINER REARDON: I want to ask you one question.

When you mentioned institutions and colleges, and so forth, did I understand correctly that you had degrees from all of them?

THE WITNESS: From Temple University and Pennsylvania and not the others. I attended the others.

TRIAL EXAMINER REARDON: You have degrees

from Temple and Pennsylvania, and you just attended the others that you have mentioned?

THE WITNESS: That is right.

TRIAL EXAMINER REARDON: Just to keep the record straight.

MR. MCCracken: Cross-examine.

Cross-examination.

By MR. WILLIAMS:

Q. Mr. Weinberg—

A. Yes.

Q. —did I understand you to say that the material commonly buy as alpaca—and I think I understood was alpaca—is about 50 percent something else?

A. Yes, sir. I should say it is a little over half alpaca, and the remainder would be a combination of fibres that are found there that are cross-breeds.

Q. Is that called alpaca, or has it some other name?

A. The whole article is sold in the market as araqueppa alpaca. That is sold as alpaca.

Q. So when it comes in to the manufacturer—how do you spell that?

A. That is the name of a town, Araqueppa, outside of Lima, in Peru, where the markets are, and that is known as Araqueppa alpaca, and it usually consists of a combination of alpaca, llama—

Q. Yes, I understand all that. When it comes to the manufacturer, the manufacturers all understand that name.

A. Araqueppa alpaca.

Q. That is what they understand?

A. Yes.

Q. When it gets to the public does it go under the name of—

A. Many names.

Q. I mean the thing itself.

A. The public would not buy it as a fibre, first of all. They get it in some form of fabric.

Q. In other words, does the alpaca when it goes to the general public—

TRIAL EXAMINER REARDON: Is the alpaca—is the cloth made from alpaca called alpaca?

THE WITNESS: No, it is not. It is called all kinds of names.

TRIAL EXAMINER REARDON: When it is called alpaca, that is what they get?

THE WITNESS: Yes, that is what they get.

By MR. WILLIAMS:

Q. It goes out to the public as—

A. As alpaca, and it is a combination of all.

Q. Now, I noticed that you, when you were putting on your exhibition—

A. Thank you.

Q. —modeled by these distinguished gentlemen here—

A. Yes, sir.

Q. You put on a very dark—black, I should say, overcoat.

A. Yes, sir.

TRIAL EXAMINER REARDON: That is Exhibit 52, for identification.

MR. WILLIAMS: Sir?

TRIAL EXAMINER REARDON: That is Exhibit 52, for identification.

By MR. WILLIAMS:

Q. And then you also put on what I would call a medium gray topcoat.

A. That is right.

Q. So as to show the contrast.

A. I beg your pardon—oh, go ahead.

Q. Well, I gathered it was to show the contrast of construction.

A. That is right.

Q. And to show that nobody could be misled by that, by looking through a window, and what not.

A. Yes, sir.

Q. I also, probably wrongly, picked up a black cloth out of which topcoats was made.

A. That is not exactly topcoats.

Q. That is what I thought it was.

MR. McCracken: Do you want to see that piece of cloth?

THE WITNESS: That is not Alpacuna, first of all. I had that here for a different purpose altogether. That is not Alpacuna fabric. It is a new fabric.

By MR. WILLIAMS:

Q. Will you please explain why, when you are bringing clothes, which it is said in many cases are undistinguishable at a little distance, and particularly through a window—why you produced a black coat to contrast with a gray coat, when anybody can see that who is not blind?

A. I will tell you why we do that: There is very little sale of black topcoats. When people wear topcoats, the majority of colors—incidentally, I did not prepare these samples. These samples came to me. This is the largest selling number in the Alpacuna topcoat line.

MR. McCracken: Referring to Exhibit No.—

THE WITNESS: Exhibit No. 48, representing swatch No. 4878, is the largest individual color pattern sold in that line.

By MR. WILLIAMS:

Q. Yes, but the point we were making, however—

A. This is the largest individual overcoating ever sold, and it is representative of our products.

TRIAL EXAMINER REARDON: The witness says he did not select these things to be brought

By Mr. WILLIAMS:

Q. As a matter of fact, these are so obvious you need not show us they are different, but where the black one is involved it would not be so apparent, would it?

A. There would still be a weight difference.

Q. But it would not be so apparent, I am saying.

A. Yes, it would be just as apparent, and I will tell you why, Judge Williams: First of all you must remember that you do not see your content; you see a finish. In the overcoating you see a dense, shaggy, thing, and in the topcoating you see a flat surface. You couldn't mistake—

Q. You want to say that there is no similarity between these coats, and the average person on the street would distinguish between these two cloth constructions?

A. I think they would be able to distinguish. That is a matter of opinion. I think they could because, first of all, a topcoat is made of a light weight character; it is usually single breasted; it is usually made of a thinner weight; it is intended for a topcoat; whereas the overcoat is a bulky-looking thing, and I think the average person gazing in a window, even if the colors were the same, would say here is a topcoat and here is an overcoat.

Q. I understand, but the point I make, you mean to stand there and say that, looking through a closed window, people would come to the conclusion that the two fibres were different?

A. The two fibres?

Q. Yes,—the fibre construction of the two coats was different?

A. I don't know that they would be thinking of fibres when they were gazing in the window.

Q. Well, that is beside the point. But there is nothing in those two coats in the window to distinguish one from the other to the average person?

A. To the average person anything is a coat and anything is an overcoat. I don't know why the question. I don't understand the purpose of your question.

Q. I would like very much—

TRIAL EXAMINER REARDON: Off the record.

(Discussion off the record.)

THE WITNESS: Now, look, Mr. Williams, if you went to buy an overcoat do you mean to tell me that you would not know when a man sold you a topcoat?

By MR. WILLIAMS:

Q. Oh, no, I am not talking about that.

A. It is the same kind of question. How can you confuse two things like that?

Q. I will answer you. I have looked at those two sets of coats, topcoats and overcoats, and upon my honor I don't know that there is any difference in the appearance yet. And when I went in upstairs to buy a topcoat I also asked him to show me an overcoat.

A. Again it is the same confusion. I am trying to see if I can't unravel this confusion somehow. I am going to bring in a topcoat of the same color and let somebody tell me if they can't tell them apart. I am trying to avoid this misunderstanding.

TRIAL EXAMINER REARDON: Wait a minute.

MR. McCracken: Now, at the next hearing you will bring in a topcoat and an overcoat of the same color and let us use them as exhibits?

By MR. WILLIAMS:

Q. Now, you spoke of this Imperial topcoat, which looks like a summer coat.

A. Yes.

Q. When was that introduced?

A. I don't know. I think it was introduced this season. They had the fabric for a long time, but they introduced it this season.

Q. It has been introduced long after this case was instituted?

A. I imagine—you better ask a Siegel employee.

Q. By the way, what is your connection with Siegel?

A. Just in an advisory capacity, as with dozens of other companies.

TRIAL EXAMINER REARDON: You are independent?

THE WITNESS: Oh, absolutely independent.

Incidentally, I am not getting paid to testify, either.

By MR. WILLIAMS:

Q. I want to know what your relationship is to them, and what opportunity you would have to know all these things you are talking about, and I assume you would know, therefore, when this Imperial coat came out.

A. I know that the fabric was made some time ago.

TRIAL EXAMINER REARDON: What do you mean "some time ago"?

THE WITNESS: Oh, a few years back.

By MR. WILLIAMS:

Q. I would also like to ask you, when you say the fabric of an overcoat, what do you mean by that?

A. Why, that which you cut.

Q. Exactly.

A. In other words, if it has cotton in the back, that is part of the manufacture.

Q. Part of the cloth.

A. That is right.

TRIAL EXAMINER REARDON: That fabric is Commission's Exhibit—

THE WITNESS: 49.

TRIAL EXAMINER REARDON: Respondent's Exhibit 49 refers to what he called "fabric".

THE WITNESS: That is right.

MR. McCracken: That is right.

By MR. WILLIAMS:

Q. Now, you say, as I understand you to say, the Alpacuna word was first applied to this cotton back overcoat.

A. That is right.

Q. And why, did you say, did it become associated with the name of the topcoat? Why?

A. Why, there was a need for a companion fabric, because an overcoat manufacturer also usually makes topcoats, and Mr. Siegel asked me to see whether I can't develop an unusual combination of fibres that might give him a topcoat of quality and therefore we developed the Alpacuna topcoat fabric.

Q. Now, therefore, the Alpacuna overcoat had established such a reputation—

A. With the cotton back.

Q. With the cotton back?

A. That is right.

Q. —that they used that name to bring another coat under it; is that it?

A. That is right, sir.

Q. And then that extends on ad infinitum.

A. Ad infinitum. He might have another coat next year, and if it is good enough he will call it Alpacuna. I am working on one now. If we get it, it will be a very light weight article that can also be used as Alpacuna.

Q. What is this Imperial topcoat made of?

A. It is made of mohair, alpaca, and wool.

Q. Is it made out of the same fibre as the overcoat and the topcoat?

A. In different proportions, but in the same origin of fibres.

Q. Same fibres?

A. That is right, sir.

Q. Suppose when you make up a different fibre coat, would you still use Alpacuna as a name?

A. I would not, but if Mr. Siegel thought it was worthy I suppose he would, because the coat I am working on does not have the same combination of fibre. To him I suppose the name means an acceptable quality article, and whatever he wants to add under that name I think he would if the quality is up to standard.

Q. Is it any secret what you are putting in that coat? I do not want you to disclose any trade secrets?

A. The thing I am working on?

Q. Yes.

A. I think it is a little premature at this time.

MR. McCracken: Is that the one you call the Shetland?

THE WITNESS: No; that is the doeskin finish.

MR. McCracken: There is one called the Shetland—Alpacuna Shetland?

THE WITNESS: Yes, the Alpacuna Shetland.

MR. McCracken: And the Shetland is a certain finish?

THE WITNESS: Yes.

By MR. WILLIAMS:

Q. You mean there is a new coat out besides the Imperial?

A. It is not a new coat. They have made an Alpacuna Shetland a long time.

Q. Is there any Shetland in it?

A. By Shetland—well, there again, it doesn't have the Shetland wool. It is the Shetland finish. It is the wool similar to the wool of the Shetland Islands. The Shetland wools are scarce. I think we have some of its cousins over here in Wyoming.

TRIAL EXAMINER REARDON: There are Shetland ponies.

THE WITNESS: Now, there you are again.

MR. McCracken: But the Shetland is known as a finish?

THE WITNESS: That is a finish.

By MR WILLIAMS:

Q. As far as the public is concerned, how can they distinguish—if you put that article out as a Shetland coat, and the other a real Shetland coat, how are they going to distinguish?

A. As a matter of fact, Mr. Williams, I don't know how—I am thinking in my mind now how some of these rules or laws can be enforced.

Q. Don't you worry about that.

A. I am not worried about it, but it tends to confusion. You just asked me about the Shetland.

Q. Yes.

A. We have the cousins of the Shetland animals over here now. They brought over about 5,000 head of sheep a dozen years ago from the Shetland Islands down here in Wyoming. We get our Shetland fibre from there. It does not come from the Shetland Islands at all. But it is the same genus, or breed.

Q. But, isn't it true that when you transplant these things the fibres change?

A. They change somewhat, but we can't tell them apart, even under a microscope. They change so slightly that we can't tell them apart from the original.

Q. Take the Angora goat. Isn't there a great difference between the qualities of mohair coming from the goats in different sections?

A. Absolutely not, Mr. Williams, and that is the point I want to bring out to you. I don't know any expert, or any man using that figure—you can call in whomever you like. He can't tell you any difference in the fibre—now, I won't go as far as the fabric; I will say "fibre" which comes from Angora or from Texas—

Q. We are talking about the results.

A. Even in the finished article. Its identity is even just farther.

Q. The reason I say that is because I have read in books that the Angora has degenerated in certain areas. I don't mean degeneration to the point of uselessness—

A. Now, just a second. Let me tell how you buy that Angora fibre. It is bought according to diameters. When you buy Angora, or what is commonly known as mohair, it is bought according to the diameters, the fineness of the fibre.

Q. I am not asking you for a dissertation. I am asking you questions.

You want to say on that stand that there is no difference in the quality, the wearing quality, of the fabrics made from the Angora goat, commonly called mohair, and the results obtained in different areas, over in Europe, and in Texas, and what not? Do you want to say that on the stand?

A. I have got to qualify that. I can't say it the way you want me to, "yes" or "no", because I don't buy it that way. You can't get it that way, Mr. Williams. You buy Angora according to its diameters, to its fineness. Now, the fineness—all right, I will answer you. Now, the fineness of the Texas goat is just as fine and just as durable and just as acceptable and just as beautiful as the fine of the Angora from Asia Minor.

Does that answer your question?

Q. No, it does not answer my question completely.

I am asking you this: Isn't it understood that the fabric resulting from the mohair when it comes from goats from different parts of the world is looked upon as different quality?

A. No, it is not.

Q. Not at all?

A. It is not so noted at all. You are under a mistaken apprehension, Mr. Williams.

Q. The reason I say that is because it is my understanding from books that the Angora has deteriorated in certain sections of Europe; therefore—

A. But in our markets today we don't buy what we call Asia Minor angora, or Asia Minor mohair.

Q. You say that these fibres that you get from these transplanted goats are as good as from the original place?

A. Some of them—most of them are—I will put it that way—most of them are as good.

Q. Most of them.

A. Most of them are as good. That covers the commercial acceptance. Microscopically we can't tell them apart.

Q. But the wearing results, of course, are different?

A. Identical.

Q. The wearing results from the Angora mohair from Angora—

A. Yes, sir.

Q. —and the Texas?

A. Absolutely of the same grade and quality. The wearing qualities are almost identical.

Q. I am saying, as the goods come in from the Angora area, and the goods come in from the Texas area—you say they are the same?

A. The fine of the Texas area is just as good as the fine of the Asia Minor area. That is my answer.

Q. You can find one community where there are a few

discriminating people, and then as to another community there may not be any discriminating people; you get different results. Now, you speak of the fine—

A. The fine in both is alike, and that is all we are concerned with here.

Q. Now, you say that you were the originator of this fabric.

A. I think I was, so far as Mr. Siegel is concerned.

Q. You are perfectly familiar with all types of fibres; I mean, the general fibres?

A. I think I am.

Q. And you want to say now that you can't in any way associate any animal fibres with that name, or derive any animal fibres from that name?

A. Well, it is because I know so much about animal fibres, because I know that much about them that I don't associate them with it.

Q. Oh, you don't associate them with it.

A. No. I don't associate the name with any animal fibres, because I know—

Q. You mean the name is not associated with any animal fibre?

A. Not one iota, Mr. Williams. I have been in on the birth of hundreds of fabrics in my lifetime, and not one name that I know of is a description of the fibre in the fabric, an accurate description. First, I would not give them the accurate analysis of it. That is a secret. And, secondly, they do not ask me to give them names. They coin the name that is euphonious for their particular article.

Q. Don't you think it is a rather strange coincidence that we have here as a part of the name the name of one of the fibres in there and the part of the name of another fibre which implies to people it is a finer product? Isn't that a rather strange coincidence?

A. Probably it is a coincidence.

Q. Are you willing to say now, for the last time, that that name has no implications—now, aside from your own

knowledge of the facts in the case—that that name itself has no implication whatever as to the fibre, no association with the fibre at all?

A. From my knowledge of the industry—and that is a wide one—the name Alpacuna, and many other names of a similar character—the name Alpacuna, it gives me no reaction as to the fibre content.

Q. Oh, of course, I understand that, but I am talking about the word itself. Isn't that word susceptible of an understanding that it is made of Alpaca?

A. It does not give me any reaction at all. You can find out from others, but it does not give me any indication as to the fibre content.

TRIAL EXAMINER REARDON: All right, you have said that. Don't say it any more.

By MR. WILLIAMS:

Q. Of course, you can't speak for the public.

A. No.

Q. Now, then, there is, and there must be, some vicuna on the market, must there not?

TRIAL EXAMINER REARDON: Well, he has testified all about that.

MR. WILLIAMS: He has testified, and I am going a little further, if you please, sir.

By MR. WILLIAMS:

Q. Mr. Degerberg produced some, didn't he,—produced samples of vicuna?

A. That is right.

Q. There must be some vicuna floating around in this hemisphere.

A. I don't know where it is. But if he said so, I am not questioning witnesses. That is not my—

Q. It was produced by a witness who was brought in, and, of course, he means what he says.

So you don't know about all of these things, do you?

A. I do know that there is not any cloth around, and I challenge you or anybody else to go from one end of Philadelphia to the other, and I will pay for it if you will buy me enough for a coat—any part of Philadelphia.

TRIAL EXAMINER REARDON: Wait a minute.

Where is the 2,000 pounds supply used?

THE WITNESS: They usually use that fibre—people that make fine home sweaters will very often buy these 2,000 pounds and blend it in, in very small quantities, with rabbit hair to give a sort of a fluffy appearance.

TRIAL EXAMINER REARDON: That is where it goes?

THE WITNESS: That is usually where it goes.

TRIAL EXAMINER REARDON: All right. You do not know whether any of it goes into cloth?

THE WITNESS: I have seen little samples, Judge, but I have not seen any product.

TRIAL EXAMINER REARDON: All right.

By MR. WILLIAMS:

Q. Now, as a matter of fact, when you referred to this cloth, that has acquired a secondary meaning, as you put it, but which I do not admit, they refer to that as vicuna cloth, don't they, as distinguished from cloth?

A. They call it vicuna cloth.

Q. And that is the thing you are calling today vicuna cloth, what they call vicuna cloth?

A. That is right.

Q. And what they refer to as vicuna cloth: is that right?

A. Isn't it the same thing you are asking me twice?

Q. Absolutely, but I want to be trebly sure that we understand each other.

A. Yes.

Q. Now, when an article goes out on the market as vicuna, not with "cloth" attached to it, then wouldn't the natural implication be that it was vicuna, and not vicuna cloth?

A. You can't call something which it is not. I haven't seen vicuna. I haven't even seen the animal.

Q. We have samples here.

A. That article, if I examine it microscopically, then I would be able to tell whether it is or not.

Q. You know that Mr. Stroock sells a vicuna coat as being made wholly of vicuna cloth?

A. I don't know that?

Q. You have seen that advertised?

A. I have not.

Q. You don't know that?

A. I don't know that.

Q. So there may be a cloth—

MR. McCracken: Wait a minute.

TRIAL EXAMINER REARDON: Wait a minute.

MR. WILLIAMS: I am sorry.

TRIAL EXAMINER REARDON: Do I understand the witness Degerberg testified that he makes coats of vicuna cloth?

MR. WILLIAMS: He produced vicuna cloth.

TRIAL EXAMINER REARDON: That may be. I do not recollect that he stated that he made any cloth out of that. There is no testimony to that effect.

MR. WILLIAMS: What is the use of making samples, then?

TRIAL EXAMINER REARDON: Mr. Williams, I heard no testimony that there were any overcoats—

MR. WILLIAMS: I did not say overcoats; I said he

produced samples of vicuna cloth, and he got it somewhere.

TRIAL EXAMINER REARDON: Off the record.

(Discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. Now, then, Mr. Weinberg, you say that you don't know that he does manufacture coats which he calls whole vicuna?

A. I don't know that he is even in the coat manufacturing business.

Q. I thought you knew Mr. Stroock.

A. I do know Mr. Stroock, but I don't know that he manufactures coats at all. He manufactures fabrics. That is different. I don't know that he has any for sale. I don't know that you can call up on the phone and order from him so many yards of vicuna and get it delivered. I don't know that.

Q. You are being rather technical. He may not manufacture coats, but he manufactures cloth which he calls whole vicuna.

A. I don't think he does.

TRIAL EXAMINER REARDON: You don't know, do you?

THE WITNESS: I don't know.

MR. WILLIAMS: If he doesn't know, that is all right. I am trying to show—

TRIAL EXAMINER REARDON: Well, let us get ahead. He does not know the answer to that question.

MR. WILLIAMS: That is what I was trying to show.

THE WITNESS: And I—

MR. WILLIAMS: Wait just a minute.
I think that is all.

MR. McCracken: I want to ask him one question, if you do not mind.

Re-direct-examination.

By MR. McCracken:

Q. You are familiar, I think you said, with many names ending with "u-n-a" or "k-u-n-a" or "c-u-n-a".

A. Yes, sir.

Q. As applied to garments?

A. Yes, sir.

Q. Do any of them, to your knowledge, contain an implication of the hair content?

A. None of them.

I also say this—

TRIAL EXAMINER REARDON: Wait a minute. Let him ask a question.

By MR. McCracken:

Q. Do any of them have a meaning to you other than a trade name meaning?

A. None whatever.

Q. Has that "u-n-a" come to have any reference in the public mind, to your knowledge, with any particular finish or character of cloth?

A. Just a soft finish fabric, as has been testified by other people on the stand.

Q. In other words, they are largely imitations of Mr. Siegel's article?

A. Usually.

MR. WILLIAMS: Have you finished?

MR. McCracken: Yes.

(Witness excused.)

MR. WILLIAMS: I understand we are about through with the witnesses, and I just want to make an observation for the record.

Now, as I understand it, these coats are not offered for the purpose of showing any labels that might be on them.

MR. McCracken: No.

TRIAL EXAMINER REARDON: He wants to show them to the Commission, having had them already marked for identification in connection with the testimony.

MR. WILLIAMS: Now, secondly, I think it is understood that when the Commission closed its case it was done with the idea that we would put on more witnesses, if available.

MR. McCracken: All right. We will adjourn today tentatively until two weeks from today. Is that all right?

* * * * (N. T. pp. 1086-1089.)

PHYLLIS RUBIN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Will you please state your name for the record.

A. Phyllis Rubin.

Q. What is your address?

A. 1639 North Eighth Street, Philadelphia, Pennsylvania.

Q. Miss Rubin, you are employed by whom?

A. Gimbel Brothers.

Q. In Philadelphia?

A. Yes.

Q. In what capacity?

A. My office is called the Bureau of Merchandise Information. That comprises a comparison department, staple stocks, and customer requests.

Q. In the course of your work, do you have occasion to study the trade marks and trade names of merchandise?

A. Yes.

Q. Are you familiar with trade marks and trade names of the general merchandise sold in your store?

A. Yes.

Q. Did you ever hear of the word "Alpacma"?

A. Yes, sir.

Q. What does that word mean to you?

A. A trade name.

Q. Applied to what?

A. A coat.

Q. Do you happen to know to whom the trade name belongs?

A. You mean, the manufacturer?

Q. Yes.

A. No, I do not.

Q. Does the word mean anything else to you?

A. No.

Q. Just a trade name applied to a coat?

A. Just a trade name.

Q. Would that be a man's coat or a woman's coat?

A. A man's coat.

Q. An overcoat?

A. No, just a coat; I mean, a man's coat. It would not necessarily be an overcoat because it is a trade name.

Q. In other words, it might be applied to several kinds of coats?

A. That is right.

Q. That is what your thought is?

A. Yes, that is right.

Q. Do you know whether it is applied to more than one type of coat?

A. Yes.

Q. To what does it apply in that respect?

A. An overcoat and a top coat.

Q. Did you ever hear of an animal called the "vicuna"?

A. No, sir.

Q. You do not know anything about that?

A. I saw the name in the dictionary. That is about all.

Q. What is the dictionary definition of it?

A. Some kind of a very rare animal that you practically never see, or never see the fur of.

Q. Do you know whether the word "vicuna" is applied to any kind of cloth or finish?

A. I have heard of vicugna finish, but as far as the vicugna, the real vicugna, itself, I have never seen it offered in an advertisement. I have never seen the material made of vicugna.

Q. You say you have heard of vicugna finish. What does that mean, if you know, or what kind of a finish is that, in your mind?

A. I honestly do not know.

Q. When you hear the name "Alpacuna," does it carry to your mind anything in connection with vicugna?

A. No.

Q. Are you familiar with the term, "All-wool clothing"?

A. Oh, yes.

Q. When you think of an all-wool garment, as for example, such a coat as I have on now, what does that term "all-wool" mean to you? Does it mean every piece of yarn in this garment is wool?

A. To a certain extent, yes, except for the other materials that go in to make the garment; for instance, you have to have facing for a suit with heavy material.

Q. That is buckram, is it ~~not~~?

A. Well—

TRIAL EXAMINER REARDON: That is, a canvas?

THE WITNESS: That is it, a canvas material.

By MR. McCracken:

Q. That is in the collar and lapels, and other places?

A. Yes, to give it stiffening, a sort of stiffening.

Q. Do I understand you to say that the thought in your mind is that all-wool applies only to the outer surface?

A. That is right, to the surface material.

Q. If you were shown first a top coat and examined it, and found, with the exception of these facings in the collar and elsewhere, it was all-wool or all-hair, and then saw an overcoat made under the same name, but with a cotton backing, would you be surprised if they were under the same name?

A. No, sir.

Q. Just explain that, please.

A. Well, there are so many things that go into the making of an overcoat. There would be a lining in some overcoats, I mean the better quality overcoats usually have a lining. That lining would usually be of silk. A topcoat is very rarely lined, because of the difference in weight.

An overcoat would be heavier and it would have a backing, where the top coat won't have the backing on the surface material.

Q. Do you happen to know whether cotton backing in overcoats is now an accepted form of manufacture?

A. Oh, yes.

MR. WILLIAMS: I object to that. I do not think that has any bearing on the case, whatsoever.

TRIAL EXAMINER REARDON: I will overrule the objection and give you an exception.

MR. WILLIAMS: I objected merely for the sake of the record.

By MR. McCracken:

Q. Is it a common form of manufacture, now?

A. Oh, yes.

Q. Do you happen to know that the Alpacuna overcoat does have a cotton backing?

A. Yes, I know that.

Q. In the advertising of this overcoat, I believe, by Gimbel Brothers and other people, there is a slogan, "There is only one Alpacuna"; what does that mean to your mind?

A. It means, to my mind, that the manufacturer has taken this trade name and just has put it into one type coat.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record. You may proceed.

By MR. McCracken:

Q. Do you know of any other trade names or trade marks applying to men's clothing that end in "cuna" or "una"?

A. I have heard of a lot of them. I do not know the names offhand, but there are many on the market.

Q. Do any of them convey any meaning to your mind except just a trade name?

A. Just a euphonious name that somebody has picked out as a trade name.

Q. Is it or is it not in your experience, Miss Rubin, a common practice for a manufacturer to sell the same garment in different retail stores under different names?

A. Oh, yes, that happens every day in the week in every store.

Q. Can you give us a few examples of it?

A. Yes, I can, I think. The Dobbs Hats, are sold all over under different names. L'Aiglon Dresses I know are sold under "L'Aiglon" and they are also sold under the store's name.

There are many, I just cannot recall them.

Q. If this overcoat, the same garment, were sold in Gimbel Brothers under the name "Alpacuna" and in some other store in Philadelphia, under a different trade name, that would not be an unusual practice?

A. No.

MR. McCracken: Cross-examine.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By MR. WILLIAMS:

Q. You are familiar, I assume, with the animal known as "alpaca"; at least, the material known as "alpaca", are you not?

A. Oh, yes, surely.

Q. At first you said you did not know the vicuña, but afterwards you said you were acquainted with it through the dictionary?

A. That is right.

Q. Knowing the alpaca and knowing, in a general way, the word "vicuña" would you think that this word was a compound word, using it here, "alpacuna"; would you think it was just developed out of a clear sky by a manufacturer for use on clothes of various types, only that alpaca was one of the fibres?

A. That is right, yes, I would think that.

Q. You think the creation of this name was not at all as a result of the knowledge of the manufacturer, of the alpaca and the vicuña?

A. No, I do not see how he could have that in mind.

Q. You do not think he could?

A. I do not see any connection. The word "alpaca" is there, yes, because I see practically the whole word, but you take the symbol of vicuña, that is a euphonious ending.

Q. You would think that alpaca is somewhere in that coat?

A. Yes, alpaca is a wool and would be in a wool coat.

Q. Therefore, you would assume by reason of the first part of this name, that alpaca would be in that coat?

A. Yes, I would assume there is some alpaca in it.

Q. With reference to the "cuna" you say you would not suspect anything at all in that direction?

A. No.

Q. Why is it that you would suspect that the coat would have at least alpaca in it and not have vicuña?

A. I do not think I would definitely expect either one or anything in it. As I say, to me, it is a trade name.

TRIAL EXAMINER REARDON: I think there is apt to be a little confusion here with a witness of this character when asking if "alpacuna" includes "alpaca".

I question whether a witness of this kind without having the material shown to her in connection with the article to which is affixed a name, and knowing the material is "Alpacuna" from seeing the name, there is a question of whether she assumes from the name that that alpaca is part of the word, or whether she has an assumption from the material.

MR. WILLIAMS: That is up to her. I have nothing to say about that, as far as I am concerned.

By MR. WILLIAMS:

Q. Then, finally, you say and you wish me to understand from your testimony, that if this word were applied to a man's overcoat, taking into consideration your experience in dealing with cloth in garments, such as overcoats, do I understand that word has no implication from your

experience and with your knowledge, aside from what you know about the coat, itself, and its construction, that that word standing alone has no implication to you?

A. You are speaking about—

Q. Alpacuna; you say that has no implication as to fibre content when put on an overcoat?

A. That is no implication to me except a trade name.

Q. Is that because you sell the coats, you know what the coat is made of and your firm sells the coat?

A. No. I think it is because I know there are so many trade names used in all coats; I mean, men's, women's and all types of garments, the trade names are the things they are using today and some do not apply even to the articles they are put in.

Q. You are not prepared to say that word would not mislead other people who do not know alpaca and vicuña?

A. I do not see how it could.

Q. You said by "alpaca" being in that word "Alpacuna," it would have alpaca fibre in the coat?

A. When you boil it down to the very base, when I hear the word "Alpacuna," to me, it is nothing but the trade name.

Q. You have become acquainted with it and now it is like the old story, you cannot see the woods for the trees, but you are not prepared to say that other people, in general, who are not acquainted with alpaca and vicuña, would not draw any conclusion as to the fibre content?

A. I cannot answer as to any one else.

Q. Linen being on an article would mean something to you?

A. Yes.

Q. And silk would mean something?

A. Yes.

Q. You say this word "Alpacuna" on a material which a manufacturer commonly uses in overcoats, would not mean anything at all?

A. No, it would not mean anything at all to me except a trade name.

Q. You are making that statement, trying to divorce from your mind, from your mind all knowledge you have of the coat and just taking the name and attaching it to a coat?

A. That is right. I think this is entirely different from linen and anything like that, which is a certain type of material.

Q. I am not saying the materials are the examples. We are merely trying to interpret something here.

Now, I understood you to say a while ago that the slogan "There is only one Alpacuna coat," meant there was only one type of coat; in other words, that covered one type of coat?

A. No—

Q. The slogan is, "There is only one Alpacuna coat."

A. That is the slogan that is connected with the trade name, there is one Alpacuna.

Q. Is there more than one Alpacuna coat?

A. Not under the name of "Alpacuna."

Q. What constitutes a different coat, in your mind? Do you mean to say that a coat that is wholly made out of woolen hair fibres is the same thing as a coat made out of one-third cotton cloth backing, one-third cotton; is that the same coat?

A. No. I do not quite understand your question.

Q. I am saying, assuming the top coat is made wholly of woolen hair fibres, and the overcoat is made out of woolen hair fibres but with thirty-three per cent. cotton being part of the fabric; would you say that is the same coat?

A. No.

Q. When you say that slogan says, "There is only one Alpacuna coat," that means there is only one coat of that type, in your mind, as I gather?

A. Yes, there is one coat that carries the Alpacuna label.

Q. That means the coat must be of the same construction to bear that label?

A. No. Any coat that is manufactured by that manufacturer, and the label is put into it, that coat is the one coat.

Q. You mean to say that there is not one coat, but that there are two coats; one coat is made wholly of wool, and that is one coat, and the other is made up with thirty three per cent cotton, and that is one coat?

A. No. There are two different coats, but the label does apply to ~~one~~ coat. You say there is one Alpacuna; there is one Alpacuna label.

Q. It says, "one Alpacuna"; not one label.

A. That does not make any difference. There is one brand. They are talking about a brand no matter what the difference in the coat is.

By TRIAL EXAMINER REARDON:

Q. Supposing this same manufacturer made suits of clothes: would you understand he could use the word "Alpacuna" on those?

A. Yes.

By MR. WILLIAMS:

Q. They are calling that "one Alpacuna coat," and you want this understood in your testimony, finally, that when that label, that slogan appears on the overcoat, for instance, that that same label and slogan could be on a top coat of totally different construction?

A. That is right.

Q. That is what you understand?

A. That is right.

By TRIAL EXAMINER REARDON:

Q. Could it be on a suit of clothes made of linen?

A. To me, a label would mean it is just the manufacturer's specification, no matter what he puts it in, a suit, a pair of trousers, or an overcoat.

Q. You understand the trade name is merely to identify any article as the manufacturer's article?

A. That is right.

By MR. WILLIAMS:

Q. You want the statement in the record that this word "Alpacuna" is the same as Fashion Park Clothes, for instance?

A. Yes, it is a trade name.

Q. Fashion Park Clothes is a trade name of a whole line of coats?

A. That is right.

Q. Do you mean to say anybody in the public would know "Alpacuna" would mean a whole line of coats? Do you mean to say that represents a whole line of clothes, suits, and everything else?

A. It could, yes.

Q. You mean to say that represents such a thing in anybody's mind?

A. I do not know about anybody. I know they make different style coats. I know they do not happen to make other clothing, but they could, and put that label in.

Q. You do not mean to convey the idea that that name has gained the same significance that Fashion Park Clothes or any of the others that have that distinctive use of a name has gained?

A. Yes, I think it has, yes. There is practically a Sunday that does not go by you do not see it advertised in several New York papers. It is advertised as a trade name.

Q. It is not advertised as a line name, it is advertised as a coat name; is it not?

A. I think it is more of a line name.

Q. Do you mean to say that you saw anything to so indicate or anything that said that was a line name in the advertising you saw? Was there anything to indicate that was a line name as distinguished from a trade name? Do you think you could produce one of that kind?

A. No, I do not think I know anything about that.

Q. You say wool means what to you?

A. Wool means a wool cloth.

Q. It means the cloth of which the coat is made is wool; if it says that is a wool suit, it means the cloth is wool?

A. That is right.

Q. We are not talking about the lining, we all know that is not wool; we mean the cloth is all wool?

A. Yes.

Q. It is bound to be all wool, is it not, if it says it is a wool coat?

A. Yes.

* * * (N. T. pp. 1104, 1116 inc.)

By MR. WILLIAMS:

Q. How do you suppose the word "Alpacuna" was developed? You say you are familiar with trade marks, you have studied them, you studied all these things.

How do you suppose this name was developed? Have you any idea how that was developed?

A. No. I could take a guess but I would not know really.

Q. You can guess then.

A. Alpaca, and una means one, it is Latin for one.

Q. That would not be true. There would be other coats exactly the same thing as Alpacuna, it would not be one coat?

MR. McCracken: Now, that is argument.

TRIAL EXAMINER REARDON: That is argument, Mr. Williams. The witness has testified, if you do not mind my saying so, the trade name did not indicate the fabric.

MR. WILLIAMS: She has already said it indicates that there is alpaca in it.

TRIAL EXAMINER REARDON: You might have a

brand name and still it might not indicate fabric of the coat. There might be something else in the coat.

MR. WILLIAMS: I am not satisfied with her answer.

MR. McCracken: Of course, you are not satisfied with it.

TRIAL EXAMINER REARDON: You cannot argue with this witness. She is a member of the public, as far as I can see.

MR. WILLIAMS: She is a member of an establishment that sells the Alpacuna coat.

By MR. WILLIAMS:

Q. How do you pronounce Alpacuna; how do you pronounce A-l-p-a-c-u-n-a (spelling)?

A. Alpacuna.

Q. In dividing that word into syllables, you would divide it as though "cuna" were one part and "Alpa" another part; in that pronunciation, as I see it, "Alpa" would be one syllable and "cuna" would be the other syllable?

TRIAL EXAMINER REARDON: I do not think the witness should be asked about the division of words.

THE WITNESS: Personally,—

By MR. WILLIAMS:

Q. That is how you pronounce it, Alpa-cuna, as though it were two divisions, Alpa and cuna?

A. It is much easier to say it that way.

Q. No one would say Alpac-una?

A. No.

TRIAL EXAMINER REARDON: This is all argument.

MR. WILLIAMS: That is all.

There is one more thing. If your Honor please, I offer in evidence Commission's Exhibit 115 for identification.

TRIAL EXAMINER REARDON: Is there any objection?

MR. McCracken: No, sir.

TRIAL EXAMINER REARDON: There being no objection, it is received in evidence as Commission's Exhibit No. 115.

(The leaflet referred to, heretofore marked for identification "Commission's Exhibit 115," was received in evidence.)

MR. WILLIAMS: That is all.

* * * * * (N. T. pp. 1118, 1122 inc.)

MURIEL BROWN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Please state your name for the record.

A. Muriel Brown.

Q. What is your address?

A. 913 Monmouth Street, Gloucester, New Jersey.

Q. By whom are you employed, Miss Brown?

A. The Philadelphia Record.

Q. That is a newspaper in Philadelphia?

A. Yes.

Q. In what position?

A. I am a professional shopper.

Q. A professional shopper?

A. Yes.

Q. What are your duties as such professional shopper?

A. I cover the ads of various department stores and specialty shops. I write surveys of the various stores in the city.

Q. The purpose of your work is what?

A. To determine the pulling power of the ad and the value of the merchandise that is included in those ads, and the customers' response.

Q. How long have you been doing that work?

A. In this particular job, I have been doing it for a year and a half.

Q. Before that, did you do the same kind of work somewhere else?

A. Yes, I have.

Q. You spend a great deal of your time reading and studying advertisements?

A. I would say I spent about ten years doing that.

Q. In your work, do you also deal with and study the question of the authenticity of the ads?

A. Why, yes, I would say so, to see if they have a comparative value. I just check it.

Q. Is the point of your work to find out whether or not it is, let us say, honest advertising?

A. Yes.

Q. In the course of your work, do you become familiar with trade marks and trade names?

A. Yes.

Q. Did you ever hear of the trade mark or trade name of "Alpacuna"?

A. Yes, I have.

Q. To what does it apply, in your mind?

A. Either a top coat or an overcoat.

Q. What does the word mean or signify to you?

A. Well, I suppose, I think that Alpacuna would probably mean a wool with rayon filling.

Q. Is that all? Does it signify a trade name?

A. Oh, yes.

Q. If you go beyond that, you say it might be what?

A. I imagine the fabric would have some alpaca and some sort of a body, a filler.

Q. Do you happen to know from your own knowledge of the fabric, itself?

A. Yes, it does have wool in it.

Q. Did you ever hear of the word "vicuña"?

A. Yes, I have heard of vicuña fox.

Q. What is vicuña fox?

A. It looks a little bit like blue fox, but it does not wear very well, and if you take it out in the rain it gets frizzly.

Q. Is that made of the pelt of the vicuña animal?

MR. WILLIAMS: I object to this. It has no bearing on the case.

MR. McCracken: I am entitled to ask this witness or any other witness what the word "vicuña" means to him or her.

TRIAL EXAMINER REARDON: I overrule the objection.

MR. WILLIAMS: Exception.

By MR. McCracken:

Q. Do you know whether or not the thing you describe as vicuña fox is made out of the pelt of the animal, which, it has been testified, thrives in the Andes Mountains in Peru?

A. No, I do not know that.

Q. Did you ever see the pelt of the animal?

A. What I saw of vicuña fox, I do not know whether it was a pelt, I do not know whether I saw the pelt.

By TRIAL EXAMINER REARDON:

Q. It was a lined garment when you saw it, the vicuña fox you have spoken of had a lining on it?

A. A lining?

Q. Yes, or was there a skin underneath the fur?

A. It was a woman's dress coat and the collar was of this fox.

By Mr. McCracken:

Q. It was a fur?

A. Yes.

Q. Do you know the term "vicuna" as applied to a finish on a cloth?

A. No.

Q. You do not know it in that respect?

A. No, I do not.

Q. Getting back to the slogan, "There is only one Alpacuna," what does that mean to your mind?

A. That means there is a coat put out under the trade name "Alpacuna" and that is it, by way of emphasis.

Q. Does it mean that there is only one construction of garment, only one kind or type of garment?

A. I should not think so. It is like a certain brand of china, it can have gold decorations or it can have pastel flowers, but it would still be that same brand of china.

Q. Would you consider that a garment made with different fibre content but under the name "Alpacuna," could still be put out by the manufacturer under that name?

A. Yes.

Q. Is that a common practice?

A. Yes. I just gave an example of the china.

Q. Is it or is it not a common practice for a manufacturer to sell his product under different trade names?

A. Yes, that is a common practice.

Q. In the same city?

A. Yes.

Q. Can you give us any examples?

A. There is the Formode Corset sold in Strawbridge, and there is the Formfit Corset sold by Gimbel's.

Q. They are made by the same manufacturer?

A. Yes.

Q. They are identical corsets?

A. Yes. Then, Strawbridge and Clothier have a Truhu Silk, and Wanamaker's have the Skinner Silk. The customer gets a good piece of silk any way.

Q. It is the same silk?

A. Yes.

Q. Made by the same manufacturer?

A. Yes.

Q. That is not an uncommon practice, is it?

A. No.

Q. If you saw an advertisement of an Alpacuna top coat, knowing there was an overcoat sold under that name "Alpacuna," would you expect them to have the same fibre content or material?

A. I would expect it to be different. I would expect a heavier fabric in the overcoat.

Q. Would you expect it to necessarily be exactly the same fibre?

A. No. I would wait to see it.

Q. You would want to see it first?

A. Yes, and I would want to know the price difference, too?

Q. You are testifying from the angle of the shopper, are you not?

A. Absolutely.

Q. Not from the store?

A. No.

Q. Not from the store?

A. No.

MR. McCracken: Cross-examine.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By MR. WILLIAMS:

Q. Miss Brown, how would you suppose that this manufacturer came upon this name "Alpacuna"? That is pronounced "Alpa-cuna," is it not, "alpa" and "cuna"?

A. Yes.

Q. That is the way it is pronounced commonly, in general?

A. Yes.

Q. How do you suppose this manufacturer who deals in cloths and manufactures coats; at least, he handles cloths, and manufactures coats, would arrive at this name?

A. I suppose he would call copywriters in and would want to find something easy to pronounce, and in the second place, I suppose they would like to suggest something that kind of goes with the product or products.

Q. You think that being associated with these animals and these fibres, it would be natural to make a name out of parts of those names?

MR. McCracken: Parts of what names? There is a hidden inference there.

By MR. WILLIAMS:

Q. They say "vicuna" and "alpaca" and "llama" and so on?

A. I have said that I was thinking of alpaca previously in my testimony, and I said that is one animal.

Q. You mean with the vicuna, of course?

TRIAL EXAMINER REARDON: This witness does not know how this thing was made up.

By MR. WILLIAMS:

Q. But considering a person who knows vicuna, generally, the same as you do Alpaca, would it not be reason-

able to suppose that such a person could understand there was vicuna as well as alpaca in that coat?

A. I do not know of any person who does know vicuna in my own personal acquaintance.

Q. I am talking of people who do know it. There are people who do know it?

A. Are there?

Q. Yes. I might say, as a matter of fact, there were two vicunas exhibited at the New York World's Fair. We assume some people do know it.

Would they not have as much right to believe there is vicuna in that coat the same as you believe that there is alpaca in it?

A. I do not know why. There is no "v" in there.

Q. There is "cuna".

A. I have heard "cuna" lots of other times. It would not have to be vicuna.

Q. I am talking now of dealing with clothes. Have you heard it in connection with clothes?

A. I have never heard of vicuna cloth, and I read lots of ads and see lots of merchandise.

Q. You have heard of Sylvan L. Stroock and Company?

A. Yes.

Q. And you do not know that they manufacture a vicuna cloth?

A. No. I know they have camel's hair.

Q. We are assuming a person does know about vicuna. Would you say a person would be just as much justified in believing that cuna would be vicuna as alpaca would be part of alpaca?

MR. McCracken: I object to that.

TRIAL EXAMINER REARDON: That is a matter of argument.

MR. WILLIAMS: I do not think so, in all due respect, sir.

Colonel Max R. Wainer—Direct.

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MR. McCracken: I object to the question.

TRIAL EXAMINER REARDON: There have been a lot of those questions asked with and without objection. I will overrule the objection.

THE WITNESS: I do not know whether they would or not.

By MR. WILLIAMS:

Q. You are not prepared to say they would not?

A. I do not know.

* * * * (N. T. pp. 1131, 1147 inc.)

COLONEL MAX R. WAINER was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Will you please state your name for the record.

A. Max R. Wainer, Colonel United States Army, retired.

Q. What is your address, Colonel Wainer?

A. 2403 South Twenty-first Street, Philadelphia, Pennsylvania.

Q. How long were you in the Army, Colonel?

A. I still am in the Army, as far as that goes.

Q. Are you a West Pointer?

A. No, sir. I rose from the ranks.

Q. How long were you in active service?

A. Thirty-three years.

Q. You were in the last war?

A. Very much so.

Q. With what Division?

A. First Division.

Q. I guess you saw some service, did you not?

A. I went over with them and came back with them.

Q. What is your present business, if any?

A. I am the executive assistant to the president of
N. Snellenburg & Company, Philadelphia.

Q. And have been for how long, sir?

A. For three years.

Q. What are your particular duties?

A. The administration of the costs of our plants, costs
of operation.

Q. In the course of your work, Colonel, do you become
familiar with trade marks and trade names of merchan-
dise sold in your store?

A. Yes, sir.

Q. And other stores?

A. Yes, sir.

Q. You watch the advertising?

A. Yes, sir.

Q. Do you know the trade mark or trade name "Alpa-
cuna"?

A. I know it as a trade name.

Q. To what does it apply?

A. To an overcoat.

Q. Is it sold in your store under that name?

A. I do not think so.

Q. What does the name mean to your mind when you
see the word "A-l-p-a-c-u-n-a"?

A. Nothing more than a name, that is all, just a trade
name, that is just the way it registered with me.

Q. Does it signify any particular fibre content of the
overcoat?

A. It has not to me, sir.

Q. Are you familiar with the animal, vicuña?

A. I do not know a thing about it.

Q. Do you know anything about a cloth or a finish
called "vicuña finish"?

A. No, I am not versed in the composition at all.

Q. It has been testified here that there is used in this advertising the slogan, "There is only one Alpacuna coat"; what does that mean to you, sir?

A. Just one trade name, "Alpacuna".

Q. Does it mean there can only be one type of coat sold under that trade name?

A. Under that trade name, yes, sir.

Q. Does it mean the manufacturer cannot put out more than one garment under that name, or can he put out several garments under it?

A. He can put out the same garment under other names, and the same garment under several names.

Q. Can he also put out, to your mind, more than one garment, under the name "Alpacuna"? An overcoat and a top coat, it has been testified, are put out under that name; is there anything unusual about that?

A. No.

Q. Is there anything unusual in selling an overcoat or a pair of trousers, or a sweater, under one name?

A. Not at all when used as a trade name, as "Alpacuna".

Q. It would have to be made by some other manufacturer?

A. Some other man, yes.

Q. You also told us there is nothing unusual in selling the same garment under several trade names, even in the same town?

A. No, I do not think so.

Q. Do you know of instances in which that is done?

A. It has been brought to my notice several times.

MR. WILLIAMS: I ought to object to this. The fact that somebody else does this is not going to help this matter as far as I can see it, and I object.

TRIAL EXAMINER REARSON: I think both contentions are unnecessary because the law on this is well established.

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. McCracken:

Q. Colonel, when you speak of a garment as an all-wool garment, as, for example, the suit you have on or that I have on, is your description of it as an "all-wool" garment affected at all by the fact it has a buckram lining in the collar, and it has a velvet collar as some dress suits and coats do?

A. When I speak of this suit, I speak of it as a suit, and when I speak of it as a wool suit, it means a wool suit regardless of all the buckram lining, and regardless of all the inside lining, or anything; I am speaking of it as a wool suit.

Q. With reference to the exterior piece, the cloth, I presume?

TRIAL EXAMINER REARDON: That suit you designate as a "wool suit" from what you feel on the outside?

THE WITNESS: That is right.

MR. McCracken: That is all.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By MR. WILLIAMS:

Q. Do I understand you to say that you would call a coat that had cotton where you could not feel it, as being wool, if you could feel wool on the outside and only feel wool on the outside?

A. My statement still holds, if I say this is a wool suit, as an individual, I am maintaining that it is because

in my opinion and judgment, I feel that it is a wool suit and it is so registered to me.

Q. Even though it has cotton where you cannot feel it?

A. What it has in it is a question for determination between you and me in a technical discussion. If you tell me the number of threads in it and what they are made of, then I can enter into a technical discussion.

Q. Do you know the construction of the Alpaca overcoat?

A. Not at all.

Q. When you speak of cloth, what do you mean by "cloth"?

A. What I have a hold of here.

Q. You mean, from the lining on through to the outside, excluding the lining?

MR. WILLIAMS: Of course, Mr. Metracken, we do not have reference to ruchings and linings. I have never made any claim that that is cloth.

By MR. WILLIAMS:

Q. What do you understand by cloth? What is the cloth?

A. I have a hold of a piece of cloth here.

Q. It starts on the outside. Where does it end on the inside?

A. I have a piece of cloth in my hand now. There is a piece of silk lining. The cloth is what I have in my hand.

Q. If the lining were out, what would you hold on to?

A. The same piece.

Q. Do I understand you to say "cloth" in your mind is all the manufactured part of the cloth, except the lining; if you take away the lining, that would be cloth, would it not?

A. May I ask the Judge a question?

Q. Your counsel can tend to that, sir.

Just answer the question.

A. I want to ask the Judge—

Q. You do not have to. I asked you what constitutes cloth.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. Let me ask you this, then; if all of the things that constitute the overcoat, aside from the lining, is interwoven, and connected completely so that the coat could not be made without the one fibre or without the other fibre, would that whole thing be called "cloth" normally?

A. Certainly, certainly, certainly.

Q. Everything outside of the lining here would be the cloth from the inside to the outside, outside of the lining, everything would be called "cloth"?

MR. McCracken: He just said so.

THE WITNESS: I said so.

MR. WILLIAMS: I want it perfectly clear.

By MR. WILLIAMS:

Q. Are you familiar with the cloths and materials in clothes, generally?

A. Am I familiar with them?

Q. Yes.

A. I know what a cloth is.

Q. I mean fibres. You know the Alpaca, do you?

A. No.

Q. You do not know the animal named "alpaca"?

A. Just from having heard a lot of discussion in here.

Q. You never heard of alpaca before?

A. I heard of an alpaca as a material.

Q. Don't you remember there was a commonly used alpaca coat in offices, the old black alpaca coat? Are you familiar with that coat?

A. No. An officer's black coat?

Q. An office coat, we called it an "alpaca coat".

A. I did not work in any office. I was in the rear ranks of the Army as a Buck Private and I had no office coat.

Q. I mean, are you familiar with it?

A. Even when I answer, you still are insisting further.

Q. I asked, do you know what an alpaca is?

A. Just what I heard here. I have not run into an alpaca coat. Since I have been associated in my office work, I have learned now what they are.

Q. In your work, you have become familiar, or have become acquainted with alpaca coats?

A. Yes.

Q. You never heard of a vicuna?

A. Not until this morning when I heard it discussed here.

Q. When you saw that name "Alpacuna", do I understand it indicated anything at all to you as to the origin of that name?

A. Not a thing. I have seen so many trade names in the three years past. As names, they merely mean an indication of the name that the manufacturer would trade under.

Q. You are speaking solely from the viewpoint of the trade, not the public?

A. No, I am not. I am talking as an individual because I have sons whom I have bought overcoats for, and when I went to buy overcoats for them, the Alpacuna name, to me, did not mean a thing other than the trade name of it.

Q. It did not mean anything to you?

A. I felt it was perfectly natural, that is all.

Q. How would you suppose that name would be picked up by a manufacturer who uses Alpaca cloth, bearing in mind there is a vicuna cloth, and that vicuna is known in the manufacturing world: how would you suppose that name came into being?

A. I have no supposition as to how these names are obtained, because manufacturers have a peculiar way of applying names to their articles, such as one thing came into our store the other day that was called a "Jojo", and I did not know what it could mean.

Q. You think the fact that this man manufactured this coat partly out of alpaca, would have nothing to do with the creation of this name?

A. I would not know what is in his mind.

Q. You would not think there was any relationship between that front part of that name, the first part, with the alpaca fabric out of which that coat was made?

A. Not necessarily.

Q. You would not think it was suggested by alpaca at all?

A. It might have been, but not of itself.

Q. What do you mean?

A. I find the manufacturers have all kinds of ways of establishing their trade names.

Q. I am not asking you to generalize. I am asking you, in this case, speaking of a man manufacturing a garment, a large part of which is alpaca hair, wool, or whatever you choose to call it, fibre, would you say there is no relationship between that word and alpaca?

A. I do not know there is a relationship. You asked me what I think.

Q. What do you think?

A. There may have been, but I think it could have been a situation entirely different with him. I have already said to you that is the manufacturer's responsibility and his thinking, not mine.

Q. I am asking for your thinking.

TRIAL EXAMINER REARDON: He said he does not know.

By MR. WILLIAMS:

Q. I will ask you this question for the last time: you think there is no relation, there could be no suggestion even while dealing with the alpaca animal and the fibre of the alpaca animal, for the first part of that Alpacuna name?

A. It is quite possible, but I do not know.

Q. You keep bringing in "think"—

MR. McCracken: I thought you said that was the last time.

TRIAL EXAMINER REARDON: I will sustain the objection to what he thinks; it is only what he knows.

By MR. WILLIAMS:

Q. Then, as I understand it, you think it is perfectly fair to sell three coats in the same town manufactured by the same manufacturer under different names, when one of those coats is advertised, thus: "Alpacuna, there is only one Alpacuna coat"; is it fair for that advertising to go out to the public when, as a matter of fact, the Alpacuna coat is sold in two other stores?

A. It is a very fine situation as far as the customer's relationship goes.

Q. You think that is fair advertising?

A. Very fair. Fair to whom?

Q. To the customer?

A. It is fair to the customer because the customer has a possibility of obtaining the same article in three different places, provided they are all charging the same price, and when they do not charge the same price for that article, then it becomes a benefit to the customer. It becomes a benefit to the customer, oftentimes, you will find,

and I speak now of what I do know as to our customers, some customers have charge accounts in all stores because we exchange information on customers' credits, and we find that they will find an article in our store and compare it with some article bought in another store, and if the customer gets it any less, then that customer gets the benefit of that, but if it is the same price, then it occurs to me there is no harm done to the customer.

Q. You think the man who buys an overcoat invariably goes around and checks the stores to find out if his coat is the same as the other store's?

A. Yes, sir. I told you I have shopped for my boys all over the city when I go to buy overcoats for them. I shop around and every customer does the same thing.

Q. Haven't you got many customers who come in to your store and buy overcoats and top-coats, and buy elsewhere?

A. Buy nowhere else?

Q. Haven't you got customers who have bought overcoats, and suits, and top coats from your store for years, and have dealt with your store for years, and do still deal with you?

A. Yes.

TRIAL EXAMINER REARDON: I think he would have a hard time trying to ascertain that.

MR. WILLIAMS: He says there are people of that kind.

TRIAL EXAMINER REARDON: I do not care if the witness says there are people of that kind. It is a very rare case when a storekeeper can say that a person who buys from him buys from nobody else.

Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record. What I mean is this: it may be the fact that some persons

or persons, or many, buy only in one store whatever article are sold in that store, but it would not be anybody else but those persons, themselves, who would be in a position to testify that that was the fact. The storekeeper could never have that information.

MR. WILLIAMS: That is a matter of argument.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. I understand you finally to say that it is perfectly legitimate advertising to say there is only one Alpacuna coat, and it is sold in your store, when, as a matter of fact, that same identical coat manufactured by the same manufacturer, and the same in every respect, except in name, is sold in two other stores?

A. Yes, I do.

Q. You do not mean to say the public identifies "Alpacuna" with the Jacob Siegel house; do you mean to say the public identifies "Alpacuna" with the Jacob Siegel house?

A. It can.

Q. You mean the public today does identify the Alpacuna coat with the Jacob Siegel house?

A. Are you asking me what the public thinks?

MR. McCracken: I object to that.

TRIAL EXAMINER REARDON: I sustain the objection.

By MR. WILLIAMS:

Q. You mean to say the public understands the Jacob Siegel Company manufactures all those coats; do you mean to say the public understands the Siegel Company manufactures them?

A. That is the question I asked.

Q. I am asking you, do you think the public know the Siegel house manufactures that coat?

A. I do not know who manufactures that coat.

MR. WILLIAMS: That answers my question.

By TRIAL EXAMINER REARDON:

Q. You know who sells it, do you not?

A. I know who sells it.

Q. Whose trade mark do you understand the "Alpaca" is?

A. I have heard now that Jacob Siegel is the manufacturer, and it is his trade mark, that is all.

By MR. WILLIAMS:

Q. Until you came here you did not know that Alpaca, and Alperu, and Andesian, is the same coat, did you?

A. No.

* * * * (N. T. p. 1161.)

PAUL McSHANE was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Will you please state your name for the record.

A. Paul McShane.

Q. What is your address, Mr. McShane?

A. 9 West Crystal Lake Avenue, Westmont, New Jersey.

Q. Mr. McShane, what is your business?

A. I work at the Standard Oil Company, in the office.

Q. Philadelphia?

A. Yes, Broad and Chestnut.

Q. You are not in the merchandising business for cloth?

A. In no way.

Q. You are not in the advertising business?

A. In no way.

Q. You are then called here as a member of the public?

A. That is right, as a consumer.

Q. Have you ever heard of the name "Alpacuna"?

A. Yes, I have.

Q. How long have you known that name?

A. Possibly a month ago, I saw it advertised in the newspaper.

Q. What does the name mean to you?

A. To me, it is a trade name. Of course, the break down, I think, is "alpaca", then the Latin word "una", meaning one.

Q. Who broke it down, to your mind, in that way?

A. Myself.

Q. If you had to break it down, you would do it that way, Mr. McShane?

A. That is right.

Q. Did the name indicate to you, ever, that it was coined with that thought in mind?

A. Certainly.

Q. Would the name indicate to you anything about the use of the term "vicuna"?

A. Nothing at all.

Q. Do you know the vicuna?

A. I never heard of it prior to two weeks ago.

Q. You did not know what it was?

A. I did not know what it was, no.

Q. I want to ask you what your conception is of an all-wool garment. You have on a suit, so have I. That suit has in it certain elements besides the cloth, which is admitted. It has buckram and a silk or satin lining.

When you refer to it, if you do, as an all-wool suit, to what part of the suit do you refer?

A. The outside.

Q. It has been testified in this case, and you may have heard the testimony, that the alpacuna overcoat has what is called a "cotton backing"; you have heard that?

A. I have heard that, yes.

Q. When you go to buy a carpet—have you ever bought a carpet?

A. Yes.

Q. And they sell you an all-wool carpet, what do you expect to find, or what do you find?

A. Well fibres, woven on burlap or any substance like that.

Q. As a backer?

A. As a backer, yes.

Q. What does the slogan, "There is only one Alpacuna", as it appears in the advertisement, convey to your mind?

A. That there is only one with that particular name, Alpacuna.

Q. Does it convey to your mind that there may be—

MR. WILLIAMS: If your Honor please, I object to that.

Ask him what he means by "only one Alpacuna".

MR. McCracken: You ask him.

MR. WILLIAMS: I object to it, your Honor.

MR. McCracken: All right. That is enough.

MR. WILLIAMS: It is leading in this particular case.

MR. McCracken: All right. Cross-examine.

MR. WILLIAMS: I object to it as leading.

MR. McCracken: I am through. Cross-examine.

MR. WILLIAMS: Oh, I beg your pardon. I did not mean to interrupt your examination.

Mr. McCracken: I am through.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By Mr. WILLIAMS:

Q. What is this coat you are talking about?

A. A-l-p-a-c-u-n-a- (Spelling).

Q. Alpacuna?

A. That is right.

Q. Alp-a-cuna?

A. Alpae-una.

Mr. WILLIAMS: I ask the Examiner to note the two pronunciations.

TRIAL EXAMINER REARDON: I have not paid any attention to his previous pronunciation.

Mr. WILLIAMS: I am very sorry you did not, because that is very important.

TRIAL EXAMINER REARDON: I think everybody pronounces it the same way, as far as that is concerned. I paid no attention to his first pronunciation, particularly.

By Mr. WILLIAMS:

Q. You said, at first, it was Alpae-cuna?

A. You said it was.

Q. I asked the Examiner to note it, and Mr. McCracken to note it.

A. I said it was Alpae-una.

Q. I wish to show in the presence of the Examiner and the other side, you said "Alpacuna" the second way after I called your attention to it. You did say Alpae-cuna?

A. Because you stressed "alpa" and "cuna".

Q. I asked for the pronunciation and you gave it. That is all there is about that.

What does that indicate? Alpacuna, what does that mean?

A. It is a trade name.

Q. It comes from what?

A. It comes from Alpaca and una.

Q. What does "una" mean?

A. It means one.

Q. What is your interpretation of the word as to fibre content?

A. It measures in with their slogan, the one and only one Alpacuna.

Q. You mean, there is only one; that means you, personally, thought "una" referred to the coat and not to the fibre?

A. A coat.

Q. You mean the "una" attached there does not mean the fibre at all?

A. What was that?

Q. That does not refer to the fibre, it refers to the coat?

A. To the coat.

Q. The "Alpac", what does that indicate to you?

A. That is just the beginning of the word "alpaca".

Q. That means the fibre of the coat?

A. Alpaca is an animal, Alpaca.

Q. You infer from that name that the coat is made of alpaca and there is only one of that coat; is that right?

A. There is only one Alpacuna, yes.

Q. You infer that the fibre is made of alpaca?

A. I am not familiar with fibre.

Q. I know. I am asking, what does that mean to you?

A. The fibre?

Q. Yes. When it says "Alpacuna", as you say that means the fibre of the coat is alpaca, and there is only one Alpacuna coat; is that what I understand you to mean?

A. I will have to think that one out.

It is made of alpaca. It cannot be made of anything else.

Q. You say you do not know anything about vicuna?

A. Nothing at all.

Q. What is your idea of what constitutes the cloth of that coat?

A. It is a wool.

Q. What is the cloth as distinguished from the lining?

What part of the coat would be known as the cloth?

A. The outside is cloth.

Q. How about the part that runs through to the lining?

A. That is filler and stiffening.

Q. Right here where there is no filler, it starts here, where does it stop in the coat, where does the cloth of the coat stop?

A. It stops there. It stops where I can see it.

Q. In other words, in your coat, I am pointing here now to the lower part of the pocket, in the left side of your coat is the cloth that which runs from here clear into the pocket, excluding the lining; is that the cloth, everything from the outside including the lining, on to that particular place?

A. It is not. There is a filler in here which may not be any part of that.

Q. It is integrated, is it not? You could not cut one without the other?

A. I am not familiar with coat making.

Q. I asked you what would be the description of that cloth?

A. Woven fibre.

Q. Whatever was what you call the major part of the coat, would be the cloth, would it not?

A. That is right.

Q. We do not mean lining and ruching, but the major part of the coat, the cloth running clear through to the inside, where it does not include ruching and lining?

A. As I said before, I am not familiar with cloth, how it is made.

Q. Your idea would be that—

A. The whole thing would be cloth, I do not care what it is.

Q. The whole thing is cloth, outside of the lining?

A. It is all cloth, yes. There may be two or three layers.

Q. But it would all be cloth out of which your suit was made?

A. Some kind of cloth, yes.

Q. If you should see an advertisement, such as the one marked Commission's Exhibit 115, what would you gather would be the fibre content of that coat?

A. Alpaca. Of course, I cannot tell by feeling it whether it is or not.

Q. You would think it is alpaca?

A. That is right.

Q. Suppose there is an overcoat of the same name at these same figures, here, and it was called "Alpacuna". "There is only one Alpacuna"; what would you suppose would be the content of that coat?

A. What was that?

Q. Suppose this was an overcoat here, in the same advertisement, using the slogan, "There is only one Alpacuna overcoat", with these same figures; would you expect to find the same actual fibres but in greater weight, perhaps, in this overcoat?

A. It would not necessarily have to be the same. It would have to be woven for greater weight to insure greater warmth.

Q. I do not mean the same quantity, but the same named fibres, would be in one as are in the other if it is called an Alpacuna coat?

A. In addition to others.

Q. What do you mean?

A. You would have something to make it warm in the overcoat which would not be in the top coat.

Q. You mean to say there is no wholly wool overcoat or topcoat wholly wool?

A. I do not know that. I cannot say, I do not know.

Q. You cannot say that. Don't you know there are wholly wool overcoats from the center of circumference?

A. I do not know.

Q. What are they made out of, some of those high-class coats, if they are not all wool throughout?

A. I suppose they would be made of wool plus cotton, and a filler of some kind.

Q. Don't you know of overcoats that do not have any filler and are made wholly of wool?

A. There may be, but I do not know.

Q. You do not know they have cotton back ones, either?

A. That makes no difference whether they have cotton backs at all.

Q. Would you normally expect to find the two cloths to be the same where the coat is advertised with the words, "There is only one Alpaca coat"?

A. When you are talking about cloths, you are talking about the outside?

Q. I am talking about what you call cloth as distinguished from the lining and the ruching.

A. The outside of the coat.

Q. Does not the cloth go clear through the coat?

A. No, it does not. The cloth does not go through, it has a filler in there.

Q. Just a little while ago, you said you could not cut one without the other.

A. I did not say you could cut anything.

Q. I said, could you cut the surface without the backing, and the backing without the surface?

A. Of course, you could if you had it all laid out.

Q. What you call "backing" is not a backing at all, it is an integral part of the cloth?

A. You could put two pieces of paper together and cut them, but they are not together, they are separate.

Q. You do not mean to say, you do not understand there is a wrapping around the cotton in these coats; is it your idea they are just put together like two pieces of paper?

A. I do not know how they are put together.

By TRIAL EXAMINER REARDON:

Q. Is it your idea that there is something behind the cloth that is different from the things in front of it?

A. That is right.

Q. That is identifiable and different from the front?

A. That is right.

By MR. WILLIAMS:

Q. You say that the fact it says "There is only one Alpacuna coat", would indicate to your mind there is not one Alpacuna coat but two Alpacuna coats?

A. You mean, the top coat and the overcoat?

Q. Where it says, "There is only one Alpacuna".

A. It says, "There is only one Alpacuna top coat".

Q. All right. Then, read that one, Commission's Exhibit 115.

A. That is true, that is the only one, the Alpacuna coat. It may be a top coat or an overcoat.

Q. If there is only one, how could you call two coats made of different construction, one coat?

A. Two coats or one coat?

Q. If they are made of different construction, can you call that one coat?

A. There can be two coats under the same name.

Q. And which would be of totally different construction and still labeled, "There is only one Alpacuna coat"?

A. Under the word "coat", you will have to differentiate. The word "coat" is broken down to top coat and overcoat.

Q. It is not when it is advertised in one case "There is only one Alpacuna coat". That is what the label says, and that is what the medallion says, and that is what a mass of advertising says, "There is only one Alpacuna coat".

In one particular case, it may advertise a top coat and you think the coats would be the same?

A. I can see nothing wrong with advertising two coats under the same name.

Q. There are two totally different coats, and it says, "There is only one Alpacuna coat"; is there nothing wrong with that?

A. You could break it down. You are saying there is only one coat made.

Q. The legend says, "There is only one Alpacuna coat".

A. That is true.

Q. Do you also admit there are two coats, one is wholly wool, and the other is partly cotton; do you know that?

A. I said there are two kinds of coats, the top coat and the overcoat.

Q. Yes?

A. The top coat would not necessarily have to be the same, it could not be the same as the overcoat because the overcoat is much heavier. If the top coat is made of wool, and it is good for moderately cool weather, it would not be good for extremely cold weather and you would have to add to it.

Q. When you say "There is only one Alpacuna coat", that is all right when there are two Alpacuna coats of totally different construction?

A. Certainly, it is all right.

Q. What relationship have you with the Jacob Siegel Company?

A. None at all, I never heard of it.

Q. When did you come in contact with this case?

A. At dinner, at my mother-in-law's.

Q. With whom?

A. Mrs. Cole.

Q. She talked with you, all about this case?

A. I will tell you what happened. We were eating dinner one evening, and without any preliminaries, she asked me more or less as a quiz, if I had ever heard of it. I said, "Yes, I have. Isn't it advertised"? She asked me what it meant. I said, "Just a trade name, of course; the combination, "Alpac" and "una". She asked me if I had ever heard of "vicuna". I said, "No".

Q. If anybody thought that there was vicuna in there as well as alpaca, would they be justified, to your mind?

A. I still think the word is made up of "alpac" and "una". I do not think the average person has ever heard of vicuna, and I know I have not.

Q. I am asking, assuming a person did know about vicuna, there are people who know vicuna, assuming a person knows vicuna as well as you know alpaca, would not that person be justified in putting the same construction on vicuna as you put on alpaca?

A. Yes, but here is—wait a minute—strike that out.

TRIAL EXAMINER REARDON: The reporter will not strike out anything.

Read the last question to the witness and his answer as far as it goes.

(The question and answer referred to was read by the reporter.)

TRIAL EXAMINER REARDON: Now, Mr. Witness, what is your answer to that question?

THE WITNESS: No, because the word is preferably spelled v-i-c-u-g-n-a, and it is pronounced "vi-ko-nya".

By MR. WILLIAMS:

Q. I think you will find that the testimony shows

there were two of them at the World's Fair, and of course, there were a great many people that went to the World's Fair, I assume.

A. Yes, I think so.

Q. A lot of people must have come in contact with Frank Buck's Exhibit?

A. Yes.

Q. Therefore, a lot of people would know about it and I do not think it would be spelled v-i-c-u-n-a, leave that out. As a matter of fact, it is spelled both ways.

TRIAL EXAMINER REARDON: That is the reaction of his mind.

MR. WILLIAMS: I presumed he studied up on it.

By MR. WILLIAMS:

Q. I am asking the question with reference to the person who sees it as v-i-c-u-n-a, I will ask you to assume it is spelled that way.

A. I think the average person would think of "una" because more people have studied Latin than zoology.

Q. It is alpacuna, which is the common pronunciation; wouldn't that put the emphasis on "cuna"?

A. The emphasis is on "alpac".

Q. The common pronunciation has been Alpacuna; therefore, that being the common pronunciation, would not a person have just as much right to draw a conclusion from the "cuna" as he would from the "Alpa"?

A. I can only answer for myself.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. That word says that "una" means there is only one Alpacuna coat?

A. Yes.

Q. When, as a matter of fact, there are two Alpaca coats, are there not?

A. No.

Q. To your mind it says there is only one Alpaca coat, as I understand, when, as a matter of fact, there are two, you found out?

A. There is a top coat and an overcoat. If "coat" covers both, there is only one coat, but it is broken down into one top coat and one overcoat. "Coat" does not mean a thing by itself, it must be broken down into top coat or overcoat.

Q. All right, but that would mean both were the same thing if it were not broken down?

MR. McCracken: That is argument. I object to the argument.

MR. WILLIAMS: That is all.

* * * * (N. T. pp. 1177-1179.)

EDWARD G. TAULANE, JR., recalled as a witness for the Respondent, testified further as follows:

Direct-examination.

By MR. McCracken:

Q. This is Mr. Edward G. Taulane, jr.?

A. Yes, sir.

Q. You have already presented and there have been offered in evidence, a list of names, trade names, either beginning or ending with the letters "u-n-a"?

A. Yes, sir.

Q. Have you discovered some in addition to those already presented?

A. Yes, sir. I have a list of additional names which are supported by advertisements that I have in my hand.

Q. Will you be good enough to read those aloud?

MR. WILLIAMS: I object to that, because I do not think the fact that somebody uses them in advertising, is going to help this case at all, it has no bearing on this case whatsoever.

TRIAL EXAMINER REARDON: I will have to overrule that objection because I have already admitted some. That is subject to what has already been done in this connection.

By MR. McCRACKEN:

Q. Will you proceed, Mr. Taulane?

A. The names are as follows:

“Cali-cuna; cunipae; cuna-cunas; cunepae; car-acuna; tricuna; perucuna; granicuna; veleuna; kuna grand; alpoecuna; kuna polo; moneuna; aristacuna; cambrae cunas; cumrae cunas; alma-cuna; cunapie; sealcuna; placuna; scotcuna; cuna laine.”

Q. Mr. Taulane, you have been associated with Mr. Weinrott and myself in this case since its inception, have you not?

A. I have, sir.

Q. You have, on a number of occasions, had conferences with prior counsel for the Commission in this case, and correspondence?

A. Yes, sir.

Q. The first of those was, was he not, Colonel William T. Chantland?

A. Yes, sir.

Q. You are familiar, are you not, with written stipulations as to facts which were prepared, revised, and a final draft sent up here by Colonel Chantland?

A. By Colonel Chantland, counsel for the Commission, yes, sir.

MR. McCracken: I will ask that this type-written document consisting of five pages be marked for identification as an exhibit of the Respondent.

TRIAL EXAMINER REARDON: It will be marked Respondent's Exhibit 55-A, B, C, D, and E, for identification.

(The document referred to was marked "Respondent's Exhibit 55-A, 55-B, 55-C, 55-D, and 55-E," for identification.)

By MR. McCracken:

Q. I show you such a stipulation, Respondent's Exhibit 55-A to E, inclusive, for identification, marked "Final redraft," and ask you if you will look at it and advise me whether or not that draft came up to our office from Colonel Chantland?

A. Yes, sir. Those words at the top of this particular draft are written by me. There were two or three different drafts submitted.

TRIAL EXAMINER REARDON: Written at the top, how?

THE WITNESS: Just written in pencil.

TRIAL EXAMINER REARDON: They are not a part of the stipulation?

THE WITNESS: No, sir.

MR. McCracken: All right.

THE WITNESS: I will read the words "Final redraft which I apparently recopied."

I copied them to put them in a blue backer, and because they had gotten soiled while we had been discussing them.

By MR. McCracken:

Q. That particular draft is the one which I suppose is signed by Mr. Weinrott for the Respondent?

A. That is correct.

By TRIAL EXAMINER REARDON:

Q. Is that an original paper, as it stands, that you received from the Commission's offices?

A. This was received from the office of Colonel Chantland, this and four copies, identical copies, for us to sign.

Q. At the same time you received that and four identical copies?

A. Yes.

MR. McCracken: I will ask that this carbon copy of a letter, consisting of three pages, be marked for identification as an exhibit of the respondent.

TRIAL EXAMINER REARDON: It will be marked Respondent's Exhibit 56-A, B, and C, for identification.

(The document referred to was marked "Respondent's Exhibit 56-A, 56-B, 56-C," for identification.)

By MR. McCracken:

Q. I note a letter marked Respondent's Exhibit for identification 56-A, B, and C, was written under date of September 30, 1938 to Colonel William T. Chantland, the initials being "TAU" at the foot of the letter, which would indicate you wrote the letter?

A. I wrote this letter, yes.

Q. That letter refers to the draft of the stipulation which you have just had in your hands, does it not?

A. That is correct. I copied that and then we signed that and sent it down.

MR. McCracken: I will ask that this letter be marked for identification as an exhibit of the Respondent.

TRIAL EXAMINER REARDON: It may be marked Respondent's Exhibit 57 for identification.

(The letter referred to was marked "Respondent's Exhibit 57" for identification.)

By Mr. McCracken:

Q. I hand you a certain letter which has been marked for identification Respondent's Exhibit 57, and ask you if you did not receive that letter from Colonel Chantland in reply to the one that you have just identified?

A. That is correct, sir.

By Trial Examiner Reardon:

Q. When you say you received that in reply from Colonel Chantland, you are referring to Respondent's Exhibit 57 for identification?

A. That is correct, sir.

Mr. McCracken: I wish to read to you, if I may, the Commission's letter--

Mr. Williams: I am going to object to that.

Mr. McCracken: Of course, I expected you to object.

I had better offer them in evidence, now. I first offer in evidence the stipulation, Respondent's Exhibit 55-A to E for identification, testified as having been prepared by counsel for the Commission and signed by one of the counsel for the Respondent.

Mr. Williams: It was not signed by anybody on behalf of the Commission.

Mr. McCracken: They were sent back to the Commission as shown by these letters.

Mr. Williams: I object to that. That is part of the negotiation—

TRIAL EXAMINER REARDON: You do not object to it on the ground of its authenticity, or being a copy of the stipulation?

MR. WILLIAMS: I do not object to it on any formal grounds. I object on the ground of substance.

MR. McCracken: I also offer the letter dated September 30, 1938, from Mr. Taulane to Colonel Chantland, Trial Attorney for the Federal Trade Commission, which is Respondent's Exhibit 56-A to C, for identification.

MR. WILLIAMS: I object to that also on the ground it is part of the negotiations never consummated.

TRIAL EXAMINER REARDON: Do you concede that the original of that letter was mailed by Mr. Taulane to the Commission?

MR. WILLIAMS: If he says so.

TRIAL EXAMINER REARDON: Mr. Witness, you mailed that letter in the ordinary course of business?

THE WITNESS: Yes, sir.

TRIAL EXAMINER REARDON: Do you concede that it is a copy of the original letter?

MR. WILLIAMS: Yes, of course. Naturally, if I should find otherwise, then of course that would be a different matter.

I will not object now on the ground it is not authentic.

MR. McCracken: Mr. Examiner, I have no objection to Judge Williams' looking at the records.

MR. WILLIAMS: There is nothing to look over as far as that is concerned.

MR. McCracken: The third exhibit to be offered is Respondent's Exhibit 57 for identification, which

is the letter or reply from Colonel Chantland, addressed to me under date of October 4, 1938.

TRIAL EXAMINER REARDON: You offer in evidence Respondent's Exhibit 57 for identification?

MR. McCracken: Yes, sir.

TRIAL EXAMINER REARDON: Mr. Williams, you have seen that, too, and you object?

MR. WILLIAMS: I object on the same ground.

TRIAL EXAMINER REARDON: Now, I will overrule the objection, and Respondent's Exhibit 55-A to 55-E, inclusive, for identification may be received and marked in evidence as Respondent's Exhibit 55-A to 55-E, inclusive.

(The document referred to, heretofore marked for identification "Respondent's Exhibit 55-A, 55-B, 55-C, 55-D, and 55-E," was received in evidence.)

TRIAL EXAMINER REARDON: I will overrule the objection as to the introduction of Respondent's Exhibit 56-A to 56-C, inclusive, and it may be marked in evidence as Respondent's Exhibit 56-A to 56-C, inclusive, with this reservation, that at any time before the case is closed if the Commission's attorney should check and find there was error and that letter was not a copy of the original letter received by the Commission, the original may be substituted for it.

MR. McCracken: Certainly.

(The copy of the letter referred to, heretofore marked for identification "Respondent's Exhibit 56-A, 56-B, and 56-C," was received in evidence.)

TRIAL EXAMINER REARDON: Now, Respondent's Exhibit 57 for identification, the objection is overruled as to that, and it may be received and marked in evidence as Respondent's Exhibit 57.

Edward G. Taulane, Jr.—Cross.

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(The letter referred to, heretofore marked for identification "Respondent's Exhibit 57," was received in evidence.)

MR. McCracken: I am now just going to read to the Examiner, in order that I may prepare myself for the next question, a very short letter from Colonel Chantland addressed to me, dated October 4, 1938.

TRIAL EXAMINER REARDON: That is Respondent's Exhibit 57?

MR. McCracken: Yes, sir.

(Reading) "Dear Sir: This is an acknowledgment of yours of September 30," which is Respondent's Exhibit 56-A to C, "in the above matter. I am transmitting the stipulation and the attached exhibits to the Chief Counsel and Commission for their approval and decision. Your letter accords with our understanding and I will advise you as soon as the Commission has acted, submitting proposed findings and order."

By MR. McCracken:

Q. Mr. Taulane, having read that letter, did or did you not take any further steps in further preparation of this case until after you were subsequently advised that new counsel had come into the case, and that the Commission was not prepared to agree with the stipulation?

A. No. It was my understanding that the case had been settled.

MR. McCracken: Cross-examine.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By MR. WILLIAMS:

Q. Mr. Taulane, how could you understand that the

case had been settled without having some notice that the Commission had signed the stipulation?

A. It was my understanding that the stipulation had been prepared there and was approved by all parties interested in the matter there.

Q. You do not mean to say you understood the Commission had approved that, do you?

A. I understood that all the members of the Counsel Staff of the Commission had agreed upon a settlement of the case and that the matter was a mere formality of advising the Commission settlement had been made upon this basis, and that the Commission, as they saw fit, would either enter an order or dismiss the matter.

Q. As a matter of fact, it was an arrangement with counsel that was to be submitted to the Commission; there is no indication the Commission approved this stipulation?

A. No.

Q. In advance of notice that the Commission has approved that stipulation, you do not think you were entitled to make any assumption?

A. That is what I was advised by Commission's counsel, it was a mere formality to end this up.

MR. WILLIAMS: If Commission's counsel made that statement, he made a very violent presumption.

TRIAL EXAMINER REARDON: Let me say something that may clear the record as far as this goes.

I overruled the objection and admitted those Respondent's Exhibits 55-A to E, inclusive, 56-A to C, inclusive, and 57 on the theory that as far as my ruling is concerned, those exhibits constituted an offer to stipulate not to do certain things or to do certain things, and I had in my mind in doing that my experience in this Third Circuit Court in the case of John C. Winston Company, in which I appeared for the Commission, and the Court's decision and what the Court said was in line with what I am saying now.

The Court referred to the Petitioner's Counsel, and I asked was there any offer to stipulate in this case, and the Petitioner's Counsel said, "Yes, we offer to stipulate," and then the Court, whose opinion was given as I recall it, said, practically, "This is a moot question. They have offered to stipulate not to do those things," and so forth.

Notwithstanding that, I said their answer claimed that what they were stipulating they claimed was not illegal. However, that is the understanding on which they received those papers.

MR. McCracken: I would not have offered it, sir, if I were not intending to follow it with the testimony of another witness who will testify the advertising subsequently utilized by this respondent has been uniformly in accordance with the terms of that stipulation.

MR. WILLIAMS: We put swatch books in that contain types of everything that was used, that did not make any identification whatever of fibre.

MR. McCracken: You can argue that with the Commission.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. You say you conformed—

MR. McCracken: He cannot testify to that. We will follow that up.

MR. WILLIAMS: Oh, I see. I have no further questions.

MR. McCracken: That is all for this witness.

• • • • (N. T. p. 1191.)

LEO WEINROTT was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct-examination.

By MR. McCracken:

Q. Will you please state your name for the record.

A. Leo Weinrott.

Q. What is your address?

A. 1528 Walnut Street, Philadelphia, Pennsylvania.

Q. You are a member of the Philadelphia Bar?

A. I am.

Q. For how many years?

A. Well, over twenty years, twenty-four years.

Q. You have been associated with me in this case from the beginning?

A. Yes, sir.

Q. Mr. Weinrott, you are general counsel for the Jacob Siegel Company, are you not?

A. Yes, sir.

Q. You are entirely familiar with its affairs?

A. Yes, sir.

Q. Are you particularly familiar with the advertising which has been carried on both before and after this proceeding was instituted?

A. I am particularly familiar with the advertising immediately prior to the advent of the Federal Trade Commission in this case, and everything after that.

Q. Were you in consultation with Colonel Chantland along with Mr. Taulane, at the time that this stipulation, which has been offered in evidence as Respondent's Exhibit 55-A to E, inclusive, was in the course of preparation?

A. Yes, sir.

Q. You made a number of revisions?

A. Yes, sir.

Q. And suggestions?

A. Yes, sir.

Q. Some of which were accepted and some of which were not?

A. Yes, sir.

Q. You had a personal conference with Colonel Chantland, did you not?

A. Yes, sir.

Q. With regard particularly to the advertising?

A. Yes, sir.

Q. Which was the subject matter chiefly in contemplation then?

A. It was the only matter.

Q. I will ask you if you carefully followed the advertising put out by or approved by the Jacob Siegel Company since the date of the stipulation?

A. Yes, sir.

Q. I will ask you if all advertising ever put out or approved by the Jacob Siegel Company since the date of this stipulation has been strictly and uniformly in accord with this stipulation?

MR. WILLIAMS: I object to that because I think the advertising speaks for itself.

TRIAL EXAMINER REARDON: If there is any in evidence, it will speak for itself, too.

By MR. McCracken:

Q. Did Colonel Chantland give you any definite instructions as to what changes should be made in the advertising, if any, outside of that?

A. Yes, sir.

MR. WILLIAMS: Your Honor, I object to this line of examination on the ground that the counsel must know that Colonel Chantland has no authority to bind the Commission, that any discussion is absolutely sub rosa until the Commission passes on it.

TRIAL EXAMINER REARDON: I had that in mind and, as I said before, this matter is an offer to do something, an offer to stipulate.

MR. WILLIAMS: You overrule my objection?

TRIAL EXAMINER REARDON: Yes, I overrule the objection.

By MR. McCracken:

Q. Just tell us what the conversation was.

A. Colonel Chantland advised me that in subsequent advertising, this would be the kind of advertising we should use, and I agreed to it: that if we did not use fiber content in our ads and merely stressed the wearing qualities of the coat, like warmth, and less weight, whatever the other qualities of the coat were, so far as wear and tear is concerned, that under those circumstances, I need not say anything about content at all, but if I did mention content in any ad, that I should give all the content, not from the standpoint of percentage, but from the standpoint of what was in the coat, so that if there is alpaca in there, and mohair, or whatever is there, to say so, and if it had a cotton back, to say so.

As everybody knew, prior to this complaint, a great big ad appeared in Men's Wear Magazine—

TRIAL EXAMINER REARDON: Has that been offered in evidence?

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: What is your Exhibit number?

THE WITNESS: I do not know.

TRIAL EXAMINER REARDON: There is only one ad from "Men's Wear Magazine" in the case?

THE WITNESS: Yes.

TRIAL EXAMINER REARDON: Your reference identifies it.

THE WITNESS: I knew and he knew that it was prepared long before the complaint was prepared in this case, and this is in reference to our cotton back, and since then, with reference to every mat sent out from the Jacob Siegel Company, I have examined those to see that they followed that pattern as stipulated.

TRIAL EXAMINER REARDON: I want to ask counsel for the Respondent something with reference to the answer in regard to its advertising.

Counsel for the Commission directed attention to where you said vicuna was used and spelled two different ways, viengna and vicuna. It was admitted in the answer it was used.

Was that used before or after?

MR. McCracken: That was placed in the original answer.

By MR. McCracken:

Q. Will you tell the Examiner how and why that admission was placed there?

A. We were told by Colonel Chantland that—I want to get this straight. I have to go back three years on this. This is my impression, this is my best memory, that we were told by Colonel Chantland that that had to go into this stipulation, and I remember very clearly now that both Mr. Taulane, and I, in my subsequent conversations with Colonel Chantland, objected to that because we never saw it.

TRIAL EXAMINER REARDON: You objected to what?

THE WITNESS: To the word "vicuna" or even a description of that material.

By Mr. McCracken:

Q. You objected to the admission we had ever referred to the animal "vicuna" in the advertisements?

A. That is right, I objected to that, and if my memory serves me rightly, whatever the last draft was, which was prepared by Colonel Chantland, that is out.

TRIAL EXAMINER REARSON: I want to know the facts. You have admitted you used it. Is that a fact, you used that word "vicuna"?

THE WITNESS: No, sir. We cannot find one single instance, and I have looked high and low for it. Only because, if I may be permitted to put this in the record, it was only because Colonel Chantland said for purposes of this stipulation, he was putting it in, and I know we objected to it.

By Mr. McCracken:

Q. We have filed an amended answer which appears in the records in this case, in which it is admitted we have never used that word?

A. I think so.

Q. And that is in the record?

A. Yes.

Q. Is this not the case, Mr. Weinrott, were you not told by counsel for the Commission, that he had in his possession advertisements in which we had advertised that this coat was made, in part, of alpaca, in part of guanaco, and in part of vicuna; were you not told he had those in his possession?

A. I think that may be right, Mr. McCracken, but nobody ever connected with Jacob Siegel Company ever used it, and I have never used it.

Q. Was it not because you were told that those advertisements were in his possession that you accepted his word for it and agreed to the admission?

A. I would say yes.

TRIAL EXAMINER REARDON: Let us find out who was responsible for it.

MR. McCracken: That is the fact.

TRIAL EXAMINER REARDON: You were misled by something Commission's counsel said?

MR. McCracken: Yes.

TRIAL EXAMINER REARDON: You deny there was such an ad?

MR. McCracken: That is right.

TRIAL EXAMINER REARDON: You were led into believing there was because counsel said there was one.

MR. McCracken: Yes, sir.

By MR. McCracken:

Q. Mr. Weinrott, subsequently did you or did you not make a most careful search among the files and records of the Jacob Siegel Company in an endeavor to turn up a single advertisement in which the name "vicuna" was used?

A. Yes, sir.

Q. Were able to find one?

A. No, sir. I did more. I spoke to Mr. Appel, who appeared as a witness in this case, and now dead, and that is the reason that whatever is mentioned in their answer. I do not know whether it is 1934, or the year Mr. Appel came with us, we took that year, whatever it was, because we all knew we had never seen it, and we knew Mr. Appel, I believe, came with us in 1934.

MR. McCracken: Cross-examine.

TRIAL EXAMINER REARDON: Cross-examination.

Cross-examination.

By MR. WILLIAMS:

Q. Why is it, you were in such long conference with Colonel Chantland and there being any doubt in your mind, why is it you did not call for the advertising from which he made his statement?

TRIAL EXAMINER REARDON: I will say in view of this, Commission's Counsel will have the right to get those ads from Colonel Chantland and put those in the record. You will want an opportunity to put those ads in the record.

THE WITNESS: I never saw one in my life.

By MR. WILLIAMS:

Q. Will you answer the question?

A. I say, in answer to your question, that I believe all the ads that counsel has had and that you have, I submitted to the Commission. I very carefully gathered together hundreds of ads and sent them to the Commission as part of this stipulation, and in that search of all the ads over all the years, we could not find anything that looked like that. As to whether he had an ad or not, I do not know. I never saw one, and he never showed me one, but I took his word when he said so as I would yours.

Q. You are saying that you searched the files of the Jacob Siegel Company?

A. I searched the ads.

Q. Are you able to speak for all ads published in the United States?

A. All the ads that the Jacob Siegel Company authorized I searched.

Q. But you cannot speak for what the retailer does as the result of mats you send out?

A. What the retailer does?

Q. Yes.

A. No, but I can speak now for those ads that we prepare as to contents and for which we are responsible and that we send to our retailers and from which we have them copy.

Q. You cannot say, however, that the retailer did not construe that compound word to be "Alpaca" and "vicuña" fibre content; can you?

A. I am merely telling you what we did, Mr. Williams. What that retailer did after that, I do not know; but I do know this, that I had never seen, a retailer's ad which said what you said, that we ever said, back to 1934, I have never seen that.

MR. WILLIAMS: I am merely asking the question.

By TRIAL EXAMINER REARDON:

Q. I want to get this muddle unmuddled if I can. I understand you to testify that the ads prepared by the respondent, Jacob Siegel Company, and sent to retailers never included the word "vicuña" in any way?

A. Never.

MR. WILLIAMS: He also says he does not know what they did as the result of those ads.

By TRIAL EXAMINER REARDON:

Q. You also said you do not know of any such word in any ad that the retailer had?

A. No, I never saw them.

By MR. WILLIAMS:

Q. You do not make any pretense you know all the advertisements published by retailers as a result of the mats you send out; you do not make any pretense about knowing about that?

A. I know all about the mats that were sent out by the Jacob Siegel Company, and the advertising which they

authorized their retailers to do. Now, if the retailer wants to advertise something that we know nothing about, I cannot answer for what that retailer would do, I do not know anything about that.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

By MR. WILLIAMS:

Q. You say that your advertisements, subsequent advertisements, conform to this proposed stipulation, and I gather that this proposed stipulation on page 3 goes into detail as to what this fabric is made of; does it not?

A. Quite right.

TRIAL EXAMINER REARDON: It tells of what the fabric is made of?

MR. WILLIAMS: Yes, at great length.

THE WITNESS: That says what they did do.

MR. WILLIAMS: I ask that this newspaper advertisement be marked Commission's Exhibit 116 for identification.

TRIAL EXAMINER REARDON: It may be so marked.

(The advertisement referred to was marked "Commission's Exhibit 116," for identification.)

By MR. WILLIAMS:

Q. Let me show you Commission's Exhibit 116 for identification, which is an ad as late as August 27, 1940, in The Detroit Free Press.

○ This is an advertisement of Harry Saffrin; he is one of your customers, I presume?

A. Definitely.

Q. He is one of your customers?

A. Yes.

MR. WILLIAMS: If your Honor please, I offer in evidence Commission's Exhibit 116 for identification.

TRIAL EXAMINER REARDON: Is there any objection?

MR. McCracken: I have not seen it, but I guess there is none.

TRIAL EXAMINER REARDON: Please submit the advertisement to counsel for the Respondent.

MR. McCracken: I have no objection to that.

TRIAL EXAMINER REARDON: Commission's Exhibit 116 for identification will be received in evidence and marked Commission's Exhibit 116.

(The advertisement referred to, heretofore marked for identification "Commission's Exhibit 116," was received in evidence.)

By MR. WILLIAMS:

Q. Does that advertisement conform to what the stipulation says will be the type of advertising used in connection with Alpacuna, the word "Alpacuna"?

TRIAL EXAMINER REARDON: It will speak for itself as to whether it does or not.

MR. WILLIAMS: I want to give him a chance to explain if there is any explanation.

THE WITNESS: What is your question?

By MR. WILLIAMS:

Q. Does that conform to the proposal made in the stipulation as to the type of advertising to be used in connection with the Alpacuna coat?

TRIAL EXAMINER REARDON: The stipulation is Respondent's Exhibit 55-A to E, inclusive?

MR. WILLIAMS: Yes.

THE WITNESS: Frankly, Mr. Williams, I do not know what you are talking about, whether this conforms to the stipulation. This talks about an Alpaca overcoat or top coat that is going to be made to measure at no extra cost. I never saw a mat service like this in my life. Aside from anything else, I do not see anything in there that anybody can object to and which was not in accordance with the stipulation.

TRIAL EXAMINER REARDON: For the sake of the record, I will not permit any further examination on that.

You can show the stipulation and see whether or not it conforms.

MR. WILLIAMS: I ask that this newspaper advertisement be marked Commission's Exhibit 117 for identification.

TRIAL EXAMINER REARDON: It may be so marked.

(The advertisement referred to was marked "Commission's Exhibit 117," for identification.)

MR. WILLIAMS: I want to call attention to Commission's Exhibit 117 for identification, which is an ad appearing in the Elmira-Star Gazette of March 28, 1940, being an advertisement of H. Strauss, Inc., advertising Alpaca top coats. I want to put this in the record in connection with your stipulation so that it will be close enough to compare it, and I will not ask Mr. Weinrott if he wants to make any observations on that.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

You offer in evidence Commission's Exhibit 117 for identification with reference to the stipulation that has been offered and received in evidence as Respondent's Exhibit 55-A to E, inclusive?

MR. WILLIAMS: In reference to that, yes, sir.

TRIAL EXAMINER REARDON: It will be received and marked in evidence as Commission's Exhibit 117.

(The advertisement referred to, heretofore marked for identification "Commission's Exhibit 117," was received in evidence.)

MR. WILLIAMS: I would like to ask some questions with reference to a number of broadcasts as late as December, 1939.

By MR. WILLIAMS:

Q. Mr. Weinrott, I hand you some papers here. Will you examine them and state what they are, what they purport to be?

A. They are papers handed to me by you.

Q. What do they purport to be?

A. I do not know. They are marked W E M P, Milwaukee Broadcasting Company.

Q. What does that indicate?

A. That there is a WEMP, Milwaukee Broadcasting Company.

Q. Doesn't it indicate a broadcast or broadcasts?

A. I do not know.

TRIAL EXAMINER REARDON: Does the Respondent have any knowledge of that paper?

Do you have any knowledge of such a broadcast?

THE WITNESS: No, I know nothing about it.

MR. WILLIAMS: I will state that this came into my possession from the Department of the Federal Trade Commission that receives copies from broadcasting stations of broadcasts dealing with various and sundry subjects.

This broadcast deals in part with the Alpacuna coat, and they represent it to the Commission, and sent it to the Commission as having been made by these various broadcasts, and by the names of the concerns furnished, and I want to ask Mr. Weinrott to read that over, and see if that broadcast conforms—

TRIAL EXAMINER REARDON: He does not know anything about it. If you will put them in evidence, they will speak for themselves.

There may be objection to them.

MR. McCracken: I certainly object to those broadcasts being introduced here without further proof.

TRIAL EXAMINER REARDON: Very well.

MR. McCracken: As I understand it, I did not object to these advertisements going in as retailers' advertisements, it was understood, I believe, that we did not put the advertisements in the newspapers and we cannot be bound by what the retailers said.

The advertisements speak for themselves.

TRIAL EXAMINER REARDON: I asked you at the time because you had previously made an objection you were not bound by them.

MR. WILLIAMS: It appears as an advertisement of one of their customers; pure and simple. I am not saying one way or another.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

I understand that the Respondent's counsel has objected to Commission's Exhibits 116 and 117.

MR. WILLIAMS: May I ask in this connection that the mat that was used for advertising that took place in 1940, be supplied. You have a number of mats, and I ask that they be produced, the mats that were sent out.

TRIAL EXAMINER REARDON: Counsel for the Respondent has stated that when he did not object to the admission of Commission's Exhibits 116 and 117 for identification, he did not object on the ground that they were published by the retailers but that he objected to the respondent being bound by them.

I overruled that objection the same as I did the other, and an exception is given to the respondent.

MR. McCracken: I ask that this document, consisting of two pages, be marked for identification as an exhibit of the Respondent.

TRIAL EXAMINER REARDON: The document may be marked Respondent's Exhibit 58-A and 58-B for identification.

(The document referred to was marked "Respondent's Exhibit 58-A and 58-B," for identification.)

MR. McCracken: At this time, I desire to offer in evidence Commission's Exhibit 58-A and B for identification, which is a certification of the trade mark "Alpacuna," issued by the Commissioner of Patents under date of the twenty-fourth day of April, 1931.

MR. WILLIAMS: I object to it as it has no bearing on the case.

TRIAL EXAMINER REARDON: I will overrule the objection. It will be marked in evidence as Respondent's Exhibit 58-A and B.

(The document referred to, heretofore marked for identification "Respondent's Exhibit 58-A and 58-B," was received in evidence.)

MR. McCracken: I would like to call to the Examiner's attention, the fact that the word "Alpacuna" appears as a trade mark to have been adopted and used as the trade mark shown in the accompanying drawing for men's top coats, overcoats, and suits.

If your Honor please, we ask permission at this time to substitute a photostatic copy of Commission's Exhibit 58-A and B for the original document, in order that Mr. Weinrott may retain the original document for his files.

TRIAL EXAMINER REARDON: That may be done.

MR. McCracken: I believe, sir, that we were asked to produce a sample, by the Federal Trade Commission, of both the top coat and the overcoat, and a sample in the same color of both the top coat and the overcoat.

I think the counsel for the Commission wants them, and we have them here.

I will ask that this sample of cloth be marked Respondent's Exhibit 59 for identification.

TRIAL EXAMINER REARDON: It may be so marked.

(The sample of cloth referred to was marked "Respondent's Exhibit 59," for identification.)

MR. McCracken: I will ask that this piece of cloth be marked Respondent's Exhibit 60 for identification.

TRIAL EXAMINER REARDON: It may be so marked.

(The sample of cloth referred to was marked "Respondent's Exhibit 60," for identification.)

By MR. WILLIAMS:

Q. I call your attention to Respondent's Exhibit 59 for identification which purports to be and was offered and handed to me by respondent's counsel, as being material out of which the Alpacuna overcoat is made; what is that that I hand you, there, what would you call the material; what is that I am handing you?

A. This is a piece of cloth.

Q. That whole thing represents cloth, that is cloth, is it not?

A. It is a piece of goods.

Q. That piece of goods there represents cloth out of which the Alpacuna coat is made?

A. I do not know anything about that. All I know is that it is a piece of cloth.

Q. This is cloth?

A. Certainly.

MR. WILLIAMS: That is all.

TRIAL EXAMINER REARDON: Is there any move going to be made to introduce Respondent's Exhibits for identification 59 and 60 in evidence?

MR. WILLIAMS: I would like them to be introduced.

TRIAL EXAMINER REARDON: What about the other one, Respondent's Exhibit 60 for identification, are there no questions to be asked or anything?

You are going to offer these things as Exhibits without any questions?

MR. WILLIAMS: I understood that they speak for themselves.

By MR. WILLIAMS:

Q. Mr. Weinrott, what is that other exhibit, Respondent's Exhibit 60 for identification?

A. Also a piece of cloth.

Q. And that represents the cloth out of which a top coat is made, does it not?

A. It says so.

Q. That is what I thought.

A. But I do not know.

TRIAL EXAMINER REARDON: Off the record.

(There was a discussion off the record.)

TRIAL EXAMINER REARDON: On the record.

I understand Respondent offers in evidence Respondent's Exhibits 59 and 60 for identification. They may be received and marked in evidence.

(The sample of cloth referred to, heretofore marked for identification "Respondent's Exhibits 59," was received in evidence.)

(The sample of cloth referred to, heretofore marked for identification "Respondent's Exhibit 60," was received in evidence.)

* * * * (N. T. pp. 1212, 1220 inc.)

CHARLES WEINSTEIN was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Direct-examination.

By Mr. McCracken:

Q. Give your full name and address to the Stenographer, Mr. Weinstein.

A. Charles Weinstein.

Q. And your address?

A. 4935 Monument Road, Philadelphia.

Q. What is your occupation, Mr. Weinstein?

A. I am manager of the Philadelphia branch of the Amalgamated Clothing Workers of America.

Q. The Amalgamated Clothing Workers of America?

A. Yes.

MR. WILLIAMS: I did not catch that—the Amalgamated what?

THE WITNESS: Amalgamated Clothing Workers of America.

By MR. McCracken:

Q. To which of the larger labor organizations does that belong? Is that American Federation of Labor or C. I. O.?

A. C. I. O.

Q. That is C. I. O.?

A. Yes.

Q. Who is the president of that organization?

A. Sidney Hillman.

Q. How long have you held that position?

A. Ten years.

Q. And during those ten years I presume you have obtained some acquaintance with the clothing manufacturing business?

A. I did.

Q. That is the business to which your associates are devoted?

A. Yes; we represent the people who make clothing.

Q. All kinds of clothing?

A. All kinds.

Q. Including overcoats, I presume?

A. That is right.

Q. Have you had occasion from time to time, in the course of your work, to obtain some acquaintance with trade marks and trade names?

A. A few, here and there.

Q. Did you ever hear of an overcoat called the Alpaca overcoat?

A. Yes, sir.

Q. How long have you known that overcoat, approximately?

A. I would say about five or six years.

Q. Have some of your people worked on that overcoat?

A. Yes, sir.

Q. Will you tell the Examiner what that name "Alpaca" conveys to your mind?

A. Yes, sir; the type of overcoat that I like to wear.

Q. The trade name, I suppose, applies to a certain overcoat; is that it?

A. That is right.

Q. Does it convey anything else to your mind?

A. It conveys to my mind the same thing that any other advertised article would convey.

MR. WILLIAMS: We do not know what that is. That is very vague.

By MR. McCracken:

Q. Does it convey anything to your mind by reason of making up the word artificially?

A. To me it seems a word like a Chevrolet car or a Chrysler, or a Buick, or a Society Brand suit.

Q. Does it convey anything to your mind about the kind of animal that the wool of that overcoat or the hair comes from?

A. No.

Q. Did you ever hear of an animal called the vicuña, Mr. Weinstein?

A. I did. I didn't hear anything about it until about a year and a half or two years ago, when I read an article in the Daily News Record, a trade paper.

Q. What was that article about?

A. That article said an overcoat was sold for \$500.

Q. Yes.

A. There was approximately a hundred overcoats a year like that sold, if I can recall it exactly, and that was the first time I heard that overcoats are made at that price.

Q. After you read that article did there come into your mind, or does there now come into your mind, any connection between the animal "alpacuna" and the vicuna overcoat?

A. Absolutely not.

Q. Why not?

A. I just didn't think of it that way. To me, take Siegel's overcoat, it represented an overcoat. I usually get my overcoats there, and the only reason, I like the cloth. It is a soft piece of cloth.

Q. A soft piece of cloth?

A. It wears and it is light, and that is the reason I like it. I don't care what yardgoods it is; I would like it just the same.

Q. In your judgment it is a good piece of merchandise, is it?

A. Yes.

Q. Mr. Weinstein, do you know of any instances in which, in the clothing trade, the same article of clothing, say an overcoat, is sold in the same town under two different names by different stores.

MR. WILLIAMS: I object, on the ground it is immaterial if somebody else does something wrong.

MR. McCRACKEN: Mr. Examiner, I am only—

TRIAL EXAMINER REARDON: Just read the question, please.

MR. McCRACKEN: Yes; read the question, will you.

(Question read.)

TRIAL EXAMINER REARDON: Objection overruled.

MR. WILLIAMS: Exception.

A. I don't know of any specific instance of overcoat or suits, but I do know that clothing is sold in the same town under different names.

By MR. McCracken:

Q. Yes; the same clothing, the same garment.

A. The same garment. I know that large clothing stores sell other articles in the same town, under different names. I can give you the reason for it, if you want it.

Q. Yes; will you.

A. The reason for it is this: An advertised article that a manufacturer can sell only to one customer in a town, because otherwise, the other customer would not buy, he is going to lose one of them; he could not keep his plant busy and manufacture economically just an advertised article with that name, and for that reason he is selling the same article under different names to different customers, so that he can operate economically his plant by getting enough production to employ a greater number of people, and to divide the operations and have an economical way of manufacture. If he would have to depend on the advertised brand only and to limit that to certain customers in the various communities, he might not sell enough, and I know he would not in the high grade clothing, especially, because, if you take all the clothing in the country you are going to find that more than 75 percent is clothing that is sold at \$25 retail, or below, and that the upward grades are very few, and if you limit that to one customer in a town, you are not going to get enough production to manufacture economically. That is the reason they have to do it.

Q. They can make a very attractive price that way, by volume production: is that right?

A. They sell that under another name sometimes.

little bit cheaper because they don't have to allow for advertising.

Q. Yes.

A. So it is at less expense.

Q. This case has developed some advertising on this overcoat, one slogan of which is "There is only one Alpacuna overcoat". What does that mean to your mind, Mr. Weinstein?

A. To my mind, it means only what that overcoat represents to me. To me it represents a nice overcoat, light and warm—and that is all, and I like it.

Q. Of course, you know who makes it, do you not?

A. Oh, yes. To me it represents the fact that—Alpacuna, in the case of overcoats, happens to be so well advertised throughout the country that everybody in the industry, in the retail field, and many individual customers, know that Alpacuna is made by Jacob Siegel—

Q. You know that there are lots more names, such as Cunapic, Granienna, Tricuna, Veleuna, and Cuna?

A. I run across them once in a while. I couldn't place them. I know one in this city that operates under the name of "Ma-cuna".

Q. Who makes that?

A. Makransky.

Q. S. Makransky & Sons.

A. That is right.

Q. He used to be up at Broad and Lehigh.

A. That is right.

Q. And a "Ma-cuna" overcoat, I presume, means the Makransky overcoat to you?

A. That is right.

Q. And this Alpacuna overcoat means the Siegel overcoat. Do you happen to know that?

A. That is right.

Q. The Alpacuna overcoat has a cotton backing behind the wool?

A. Frankly speaking, I didn't know about that until I began to read in the papers about it.

Q. Does that make any difference to you in buying an overcoat?

A. No.

Q. Why not?

A. Because I don't buy it on the basis of what it contains or what the material is made of that goes into the coat. I buy it on the basis—I am talking as a layman now—very likely I buy an overcoat on the say-so of some friend who is wearing an overcoat and says it is good, and I buy it, and if I like it I buy another overcoat.

Q. You do not look into what is in it?

A. Absolutely not.

Q. Have you bought an Alpacuna overcoat?

A. Yes.

Q. Was there anything said to you about its being all wool, if you remember?

A. No.

Q. Mr. Weinstein, was the Alpacuna overcoat that you purchased lined with silk, or something similar to silk?

A. I don't know. I was under the impression it was celanese.

Q. Yes; but it has a lining?

A. Yes.

Q. Would you know the difference between an overcoat and a topcoat?

A. Yes.

Q. What is the difference?

A. The better grade of overcoat is usually more fully lined, and the topcoat is usually made quarter-lined.

Q. Now, I just want to ask you one more question about your organization.

You said you were vice-president, or was it manager, you said?

A. I am manager. I am vice-president of the national organization.

Q. How large is the national organization?

A. Oh, we represent about 250,000 people.

Mr. McCracken: Cross-examine.

Cross-examination.

By Mr. WILLIAMS:

Q. Are you familiar with alpaca?

A. To the extent that I know that at one time alpaca lining was put in clothing.

Q. Are you familiar with the alpaca animal?

A. No.

Q. You don't know the alpaca animal at all?

A. No.

Q. Your people work on all kinds of garments.

A. Yes.

Q. You don't know the names of the various basic elements?

A. I couldn't pose as an expert on them at all—absolutely not.

Q. I am not talking about an expert. Common knowledge?

A. Well, common knowledge to me was the fact that at one time we used a great deal of alpaca lining.

Q. You are familiar with alpaca, then?

A. I didn't know that represents an animal. To me it represented a lining put on the inside of the garment.

Q. All right.

A. Now, they changed it and they use a great deal of celanese.

Q. You also do know something about vicuna?

A. If you want me to repeat, I will have to.

Q. Well, having a knowledge of alpaca and vicuna, and this coat, of course, being fibrous, they meant nothing at all to you in connection with the word used on those goods?

A. I had no knowledge of vicuna, outside of what I read in the trade paper.

Q. Then, having read that, the word "Alpacuna" is brought up to you.

A. Yes.

Q. You say that has no connotation as to the fiber content?

A. I don't think of it in any such connection at all.

Q. Where did you buy your coat?

A. Jacob Siegel & Company.

Q. Oh, you did, you bought it from Jacob Siegel & Company?

A. Yes.

Q. The manufacturer?

A. Yes.

Q. Oh, you did—from the wholesaler.

A. That is right.

Q. Oh, I see.

Did you ever buy his topcoat? Do you know anything about his topcoat?

A. I do.

Q. You know about both of them. Very well.

Do you know the fiber content of the two of them?

A. No.

Q. Is the same fiber content in the topcoat and the overcoat called alpacuna, are they the same?

A. To me the topcoat—if I buy an Alpacuna topcoat, it represents—

Q. The same fiber, the same name of fiber, but not the same weight?

A. It represents less weight—18 ounces.

Q. You think they mean the same as the fiber content, but not as to volume?

A. Yes; if I buy Alpacuna.

Q. Yes; if you buy them both, you get the same fibers, but you don't expect the same volume?

A. I expect to get the same kind of clothing, yes.

Q. You say you read something about a vicuna coat, and you noticed that it cost \$900. Do you know that there

are coats that cost considerably less than that, \$700; and they are also vicuna?

A. No; I didn't know that.

Q. All you know about it is what was in that article?

A. The article that I read; yes.

Q. What did you pay for the overcoat that you bought from Siegel? How much did you pay for it?

A. Usually pay \$25.50.

Q. What?

A. \$25.50.

Q. You actually bought it wholesale?

A. The wholesale price; yes.

Q. You paid that for this coat?

A. Yes, sir.

Q. You actually did?

A. What?

Q. You actually paid \$25.50 for the overcoat?

A. I paid the wholesale price, \$25.50 or \$25, or \$24.50; I don't remember which.

Q. But you actually paid that for it?

A. Yes.

MR. McCracken: I think you told us that you did not buy an overcoat on the fiber content.

MR. WILLIAMS: Just a minute.

THE WITNESS: No, I do not.

MR. McCracken: You buy it because you have been told about its wearing qualities, etcetera; is that right?

THE WITNESS: That is right.

By MR. WILLIAMS:

Q. But you do not pretend to be able to speak for the people, as to how the public buys; do you?

A. I pretend to speak for myself.

Q. For yourself only.

A. I don't know what anybody else reasons—why they buy an overcoat.

MR. WILLIAMS: That is all.

Re-direct-examination.

By MR. McCracken:

Q. You know, of course, Mr. Weinstein, that an overcoat is heavier than a topcoat.

A. That is right.

Q. It has something in it besides the—

MR. WILLIAMS: Now, if the Examiner please—

MR. McCracken: Well—

MR. WILLIAMS: All right.

By MR. McCracken:

Q. Don't tell us why. It is heavier?

A. Well, an overcoat is heavier than a topcoat, for the reason, in the first place, it weighs more. An overcoat will start in at 24, 26, 30, or 32 ounces, and a topcoat will run from probably 16 to 20 to 22 ounces. An overcoat is full lined, and you put a heavier padding in it than you do in a topcoat, and, naturally, for that reason, it weighs more.

MR. McCracken: Yes.

Re-cross-examination.

By MR. WILLIAMS:

Q. When you refer to padding, you mean that material that goes between the cloth and the lining?

A. Yes.

Q. That is a separate article?

A. Sure.

Q. What is it composed of, usually?

A. Some stiffening for padding it. In the first place, the full lining weighs more, and the pocketing in an overcoat weighs a little more than in a topcoat. Then, the cloth itself weighs more, and that is why it is heavier.

MR. WILLIAMS: That is all.

MR. McCracken: That is all. Thank you very much, Mr. Weinstein.

THE WITNESS: Thank you.

TRIAL EXAMINER REARDON: You are excused.

(Witness excused.)

MR. McCracken: Mr. Hoffman.

* * * * (N. T. pp. 1235-1248 inc.)

EDWARD G. TAULANE, JR., having been previously sworn, was called as a witness for the Respondent and testified further as follows:

Direct-examination.

By MR. McCracken:

Q. Mr. Taulane, have you, at my request, examined some further advertisements of articles of merchandise bearing the names either beginning or ending with "una" or "cuna" or "kuna"?

A. Yes, sir.

Q. Have you such a list with you?

A. Yes, sir; I have.

MR. McCracken: Rather than have him read them, I will offer the list in evidence, Mr. Examiner.

TRIAL EXAMINER REARDON: Read them into the record, Mr. Taulane.

MR. McCracken: All right.

THE WITNESS: I have found the following additional names ending in "una":

Allvacuna

Camocuna

Granacuna

Caricuna

Curlecuna

Sylvacuna

Tycuna

Mia-Cuna

Granicuna

Sincunas

Forel-Cuna

Maracuna

Moreacuna

Lambacuna

Embacuna

Sali Cuna.

MR. McCracken: That is all, Mr. Taulane.

Cross-examination.

By MR. WILLIAMS:

Q. When did they first start to use these various names?

A. I don't know, sir.

Q. You don't know that?

A. No, sir.

Q. But you have no reason to think that they were using those prior to the Siegel name; do you?

A. I have not any knowledge at all on the subject.

Q. You have no knowledge on the subject; so you do not know whether they were derivations from that practice established by Siegel, or not?

A. I don't know that, sir.

MR. WILLIAMS: That is all.

THE WITNESS: These names are collected. I have compiled them from current advertising which has been submitted to me.

MR. WILLIAMS: Yes.

I object to it, then, for the reason that there is nothing on the record to show whether these other derivations were subsequent to this name, and was a consequence of the other name, and they should be allowed to give support to something that provoked or at least had caused their coming into being.

TRIAL EXAMINER REARDON: This is advertising in connection with a commodity; I suppose.

THE WITNESS: That is correct.

By MR. McCracken:

Q. They are supported by the advertisements which you have here?

A. Yes.

TRIAL EXAMINER REARDON: Were they cloth or commodities or soap or mineral water, or what?

THE WITNESS: The great majority will apply to men's and women's clothes, of various types, coatings or suitings.

TRIAL EXAMINER REARDON: All right.

THE WITNESS: And sweaters.

MR. McCracken: That is all, Mr. Taulane.

* * * * (N. T. pp. 1252-1262 inc.)

MR. McCracken: Now, Mr. Examiner, I have before me a copy of a letter dated August 29, 1939, written to Mr. George W. Williams, Trial Attorney,

Federal Trade Commission, and signed Sylvan I. Stroock, president, S. Stroock & Company, Inc.

TRIAL EXAMINER REARDON: Written to Mr. Williams?

MR. McCracken: Written to Mr. Williams, in connection with this case.

I would like to show you the letter, sir, and then I would like to call on Mr. Williams to produce the original.

TRIAL EXAMINER REARDON: I do not believe you would want the original.

MR. WILLIAMS: Let me see what it is.

MR. McCracken: Yes, look it over first (handing a letter to Mr. Williams). I thought possibly we might offer that letter.

TRIAL EXAMINER REARDON: Off the record, Mr. Reporter.

(Discussion off the record.)

MR. WILLIAMS: I object to its admission. I would like to have this man here. He makes a lot of statements that I would like to examine him on. I certainly object to it.

MR. McCracken: You did not call him, and so I wish to introduce the letter because his name has been brought into the matter.

MR. WILLIAMS: I object to it.

MR. McCracken: We have no objection to your calling him, of course.

MR. WILLIAMS: I am not going to call him. Letters like that cannot come in. They are self-serving letters. You are representing him, virtually. He appeared in the capacity of a friend, and is a sort of

technical representative of Siegel. "These are self-serving declarations, and I strenuously object to it in that form.

MR. WEINROTT: You introduced his books in evidence.

MR. WILLIAMS: I merely did that to show that the name "vicuna" has been circulated in the country.

MR. McCracken: That is the point. Judge Williams, early in this case, introduced three or four pamphlets written by this man Stroock. They are in this record. It occurred to me that some literature by Stroock had been introduced by the other side, and that perhaps this letter should be introduced as well, as bearing on this particular case.

MR. WILLIAMS: I do not think it bears on it, Your Honor.

MR. McCracken: I offer a copy of the letter in evidence. I call for the original, and if the original is not produced I offer the copy in evidence.

MR. WILLIAMS: My answer to that is that I do not have in my possession at the present time the original, and I—

MR. McCracken: You do not dispute that this is a copy?

MR. WILLIAMS: I personally do not think there is any question about the correctness of that. Of course, if I choose, I may compare it with the original.

MR. McCracken: Certainly.

TRIAL EXAMINER REARDON: This being a letter from Mr. Stroock, president of the concern that makes vicuna coats, as I understand the record shows, and

being offered by the Respondent, I take it that the matters contained therein are in the nature of a proposal by the Respondent.

I will overrule the objection and let it be marked in evidence as Respondent's Exhibit No. 63.

MR. WILLIAMS: I except to it, sir.

TRIAL EXAMINER REARDON: Yes; I know you except to it.

MR. WILLIAMS: Because I think, if he wants to bring that into evidence, it should be brought in through the witness himself.

TRIAL EXAMINER REARDON: There is no objection on the ground that that is not an authentic letter.

MR. WILLIAMS: I do not object to it on the ground that it is not a carbon copy of the letter sent to me.

TRIAL EXAMINER REARDON: Yes.

MR. WILLIAMS: Of course, I reserve the right to check it, if it is received in evidence. Is it?

TRIAL EXAMINER REARDON: Yes.

MR. WILLIAMS: But I object to it strenuously as not coming in through the proper form, through the witness himself. I object to the substance of the letter as a species of self-serving declarations, and in various other ways it is irrelevant and immaterial.

MR. McCracken: It is offered, really, as the Examiner suggested, in the nature of a proposal.

TRIAL EXAMINER REARDON: Your objection, technically, would be sound, but, as you know, the Commission is not always technical. If this letter was the first thing in connection with the matters that it speaks of, that was offered in evidence, I would

sustain your objection; but we have gone into this matter before; exhibits have been introduced by this man and his words have been introduced here. It is not the first thing we have heard; so that is why I overrule the objection.

MR. WILLIAMS: I do not object to it in a proper case, but I do object in an improper case, if the Examiner please. I agree with you, but I still here object to it, on the other grounds.

Now, I want to say that if counsel here is making up the case by this sort of thing, to show that they were willing to abandon the use of certain things, we are perfectly willing to have them withdraw their answer and are perfectly willing to let them make any admissions that they feel they would like to make, and if they want to submit the case on the admissions then the order could be issued on those admissions.

MR. McCracken: The answer to that is that if the Commission will say in advance that they will have no objection to the use of the term "Alpacuna", counsel will consider the matter.

MR. WILLIAMS: Oh, no, we absolutely cannot do that. It is a fundamental objection.

MR. McCracken: That is the end of the thing, then.

MR. WILLIAMS: What is the use of talking about stipulating the matter. It is objectionable.

MR. McCracken: I will do nothing which will discontinue the use of Alpacuna until the Supreme Court of the United States tells me to.

MR. WILLIAMS: Well, that may be.

I may say, off the record—

THE EXAMINER REARDON: Off the record.

(Discussion off the record.)

(The letter referred to was marked "Respondent's Exhibit 63", and received in evidence.)

* * * * (N. T. pp. 1267-1272 inc.)

10. FINDINGS AS TO THE FACTS AND CONCLUSIONS.

Pursuant to the provisions of the Federal Trade Commission Act; the Federal Trade Commission, on May 6, 1938, issued and thereafter served its complaint in this proceeding upon the respondent, Jacob Siegel Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act. Subsequently, the Commission issued and served upon the respondent an amended complaint charging the respondent with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said amended complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George W. Williams, attorney for the Commission, and in opposition thereto by Mont-

gomery & McCracken, attorneys for the respondent, before Edward E. Reardon, a trial examiner of the Commission theretofore duly designated by it. Subsequently the Commission entered its order directing that said amended complaint be amended to conform to the evidence theretofore taken in this proceeding, and further directing that such evidence be adopted as evidence in connection with the second amended complaint. It was further directed by the Commission that said second amended complaint, containing the amendments made pursuant to said order, be issued and served upon the respondent. Pursuant to such direction said second amended complaint was issued on May 16, 1940, and thereafter served upon the respondent. Subsequently and after the filing of respondent's answer to said second amended complaint, additional testimony and other evidence were introduced before said trial examiner in support of and in opposition to the allegations of said second amended complaint, which testimony and other evidence, together with all of the testimony and other evidence originally taken in this proceeding, were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said second amended complaint, respondent's answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument, and the Commission having duly considered the matter and being now fully advised in the premises, find that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS.

Paragraph One: The respondent, Jacob Siegel Company, is a corporation organized and doing business under the laws of the State of Pennsylvania, with its office and principal place of business located at 317 North Broad

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Street, Philadelphia, Pennsylvania. Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of men's clothing, including certain overcoats and topcoats designated by respondent as "Alpacuna" coats.

Paragraph Two: In the course and conduct of its business, respondent causes and has caused its coats, when sold, to be transported from its place of business in the State of Pennsylvania to purchasers thereof located in various other states of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its coats in commerce among and between the various states of the United States and in the District of Columbia.

Paragraph Three: In the course and conduct of its business respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations, and with individuals and firms, engaged in the sale and distribution of overcoats and topcoats in commerce among and between the various states of the United States and in the District of Columbia.

Paragraph Four: In 1929 respondent, in cooperation with certain textile specialists, developed a certain fabric for use in the making of men's overcoats. This fabric, designated by respondent as "Alpacuna" fabric, has a face or pile which is composed of approximately fifty percent alpaca, twenty percent mohair, and thirty percent wool. The fibers making up this face are worked into a cotton backing. Of the entire fabric (face and backing) the face comprises approximately seventy percent and the cotton backing thirty percent.

Respondent states that its purpose in using the under surface or backing was to duplicate as nearly as possible the natural coat of the animals supplying the fibers, the

backing representing the skin of the animal and the fibers representing the hairs or wool growing from the skin. The reason given for the use of a cotton rather than a worsted backing is that the former is more finely and closely woven, and that this makes possible the obtaining of a denser face of hair and wool fibers than would be permitted by a worsted material. It was thought also that the cotton backing would add to the durability of the garment.

A year or two after the development of the overcoat fabric, respondent began the manufacture of topcoats. The material used in the topcoats is essentially the same as the face of the overcoating fabric, the principal difference between the two garments being that in the topcoat the cotton backing is omitted in order to make the garment lighter. A further difference is that the overcoat is full lined whereas the topcoat has very little lining. The fabrics used in the coats are not manufactured by respondent but are made by another concern according to specifications supplied by respondent.

Paragraph Five: Respondent's coats are sold to the public through retail dealers. In the course and conduct of its business and for the purpose of inducing the purchase of its coats by dealers, and subsequently by the purchasing public, respondent makes use of various methods of advertising. One of such methods is the use of swatch books or books containing samples of the fabrics, which are placed by respondent in the hands of dealers purchasing its coats and also in the hands of dealers regarded by respondent as prospective purchasers. Such books are frequently displayed by dealers to the purchasing public. Some of these swatch books contain, among other advertising matter, a drawing or pictorial representation of a hemisphere, above which appears the legend, "From the Four Corners of the World". From various geographical locations shown on this hemisphere lines run to drawings

or pictures of certain animals and under each of these pictures a further legend appears. Under the picture of an Angora goat appears the legend, "Strength from the Asiatic Angora". Under the picture of a sheep appears the legend, "Durability from the American sheep". Under the picture of a guanaco appears the legend, "Silkiness from the Peruvian Guanaco", and under the picture of an alpaca appears the legend, "Richness from the South American Alpaca".

Respondent also furnishes to its dealers suggested advertising copy for use by such dealers in advertising respondent's coats in newspapers published in the trade areas served by such dealers: Frequent and repeated use has been made by the dealers of this advertising copy. In certain of the copy the following advertising matter appears:

"Ques. What is Alpacuna?"

Ans. Alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guanaco, and Texas Sheep.

Ques. Is this an unusual combination?

Ans. Yes, this combination of hair and wool is the result of 9 years of scientific laboratory research work by a textile genius."

"Studying the sources of the famous Alpacuna fabric is a real geography lesson. From the South American Andes we took the warm, light, silky hairs of the Alpaca. From the valleys of Old Peru we took the fine, lustrous coat of the Guanaco. From the plains of Turkestan we took the sturdy, durable hairs of the Angora. From the Texas Panhandle we chose the thickest, warmest, and richest sheep's wool. They were all brought together, and scientifically blended into a fabric that's unmatched for richness, luxury, warmth, light weight, long wear."

Paragraph Six: Through the use of these representations and others of a similar nature the respondent has represented, directly or by implication, that the fabric used in its coats is made entirely of wool or of wool and hair; that such fabric contains guanaco hair; and that the Angora goat hair used in such fabric is imported from Turkestan or some other Asiatic country.

Paragraph Seven: While the fabric used in respondent's topcoats is a wool and hair material, this is not true as to the overcoats, in which the cotton backing constitutes approximately thirty percent of the entire fabric. In some of its more recent advertising matter the respondent has referred to the fact that its overcoats contain cotton backing. However, such reference is usually in smaller and less conspicuous type than the other portions of the advertisement. In view of the fact that the overcoats are full lined, the prospective purchaser has little or no opportunity to observe the cotton backing when examining the garment.

In neither the overcoat nor the topcoat is guanaco hair used. It appears from the evidence that occasionally guanaco hairs may find their way into shipments of alpaca received by the mill which manufactures the fabrics for respondent, but in such cases the presence of the guanaco hairs is due entirely to accident and the amount is negligible. The Angora goat hair or mohair used in the fabrics is not imported from Turkestan or any other foreign country, but is a domestic product and is obtained from Angora goats raised in Texas. During the oral argument before the Commission it was stipulated by counsel for respondent that the defense of the proceeding was abandoned in so far as the points with respect to the guanaco hair and the importation of the mohair were concerned.

Paragraph Eight: The Commission therefore finds that the representations made by the respondent with re-

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spect to its coats, as set forth in paragraphs five and six hereof, are false, misleading, and deceptive.

Paragraph Nine: Another issue raised in the complaint is whether the name "Alpacuna" used by respondent to designate its coats is misleading, as representing or implying that the coats contain fiber obtained from the animal known as the vicuna. It is insisted by respondent that the name "Alpacuna" is merely a coined trade name made up by combining the first five letters of the word "alpaca" with the suffix "una," that the suffix was incorporated into the name only because it provided a euphonic ending, and that the name has no reference to vicuna fiber. Respondent further insists that the name has no significance in the trade or to the purchasing public other than as a mere trade name, or possibly as indicating an alpaca content, that it is not understood by dealers or consumers as indicating that the coats contain vicuna fiber.

Respondent's position finds support in the testimony of a number of witnesses. On the other hand, a number of other witnesses, including both persons in the trade and members of the consuming public, testified that to them the name "Alpacuna" indicated that the coat contained both alpaca and vicuna fiber, the presence of vicuna fiber being implied by the "cuna" portion of the name. Upon consideration of the entire record, the Commission is of the opinion that while in some cases the name might not be understood by prospective purchasers as indicating the presence of vicuna fiber, in a substantial number of other instances it would indicate the presence of such fiber. It is undisputed that respondent's coats contain no vicuna fiber. The Commission therefore finds that the name "Alpacuna" is misleading and deceptive to a substantial portion of the purchasing public in that it represents or implies to such persons that respondent's coats contain material which they do not in fact contain.

Paragraph Ten: The Commission finds further that the use by the respondent of the foregoing representations with respect to its coats, including the use of the name "Alpacuna," has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the fiber content of such coats and the origin of the materials used in such coats, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's coats as a result of the erroneous and mistaken belief engendered by such representations. In consequence thereof, substantial trade has been diverted unfairly to the respondent from its competitors, many of whom do not misrepresent their products.

CONCLUSION.

The acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

By the Commission.

GARLAND S. FERGUSON,

Chairman.

(Seal)

Dated this 28th day of

April, A. D. 1943.

Attest:

OTIS B. JOHNSON,

Secretary.

11. ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the second amended complaint of the Commission, the answer of respondent, testimony and other evidence taken before Edward E. Reardon, trial examiner of the Commission theretofore duly designated by it, in support of and in opposition to the allegations of the complaint, report of the trial examiner upon the evidence and the exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

IT IS ORDERED that the respondent, Jacob Siegel Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's coats now designated "Alpacuna" coats, or any other coats of substantially similar composition, under whatever name sold, do forthwith cease and desist from:

1. Representing that respondent's coats contain guanaco hair.
2. Representing that the Angora goat hair or mohair used in respondent's coats is imported from Turkistan or any other foreign country.
3. Representing through the use of drawings or pictorial representations, or in any other manner, that respondent's coats contain fibers or materials which they do not in fact contain.
4. Representing that coats made of fabrics which

Order to Cease and Desist.

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have a cotton backing are composed entirely of wool or of wool and hair.

5. Using any advertising matter or causing, aiding, encouraging, or promoting the use by dealers of any advertising matter which purports to disclose the constituent fibers or materials of coats composed in part of cotton, unless such advertising matter clearly discloses such cotton content along with such other fibers or materials.
6. Using the word "Alpacuna," or any other word which in whole or in part is indicative of the word "vicuna," to designate or describe respondent's coats; or otherwise representing, directly or by implication, that respondent's coats contain vicuna fiber.

IT IS FURTHER ORDERED that the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IT IS FURTHER ORDERED that no provision in this order shall be construed as relieving respondent in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the authorized Rules and Regulations thereunder.

By the Commission.

OTIS B. JOHNSON,

Secretary.

(Seal)

Commissioner Freer dissents from so much of the order as wholly prohibits the continued use of the trade name "Alpacuna" for the reason that this trade name, which has been in use for more than thirteen years, is a valuable business asset, and is neither deceptive per se,

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nor is the testimony concerning its tendency or capacity to deceive sufficiently clear and convincing as to render such prohibition of its use necessary in the public interest.

A majority of the Commission do not agreed with either Commissioner Freer's statements of fact or his conclusions of law.

By the Commission.

(Seal)

OTIS B. JOHNSON,
Secretary.

**12. PETITION TO REVIEW ORDER OF FEDERAL
TRADE COMMISSION.**

*To the Honorable the Judges of the United States Circuit
Court of Appeals for the Third Circuit:*

Jacob Siegel Company, the corporation Petitioner
above named,

Respectfully Represents:

1. That Jacob Siegel Company is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office and place of business at 317 North Broad Street, County of Philadelphia, Commonwealth of Pennsylvania.

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2. Petitioner further represents that on April 28, 1943, the Federal Trade Commission, in a certain proceeding entitled "In the Matter of: Jacob Siegel Company", Docket No. 3403, entered a certain Order reading in part as follows:

"Be It Ordered that the respondent, Jacob Siegel Company, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of respondent's coats now designated 'Alpacuna' coats, or any other coats of substantially similar composition, under whatever name sold, do forthwith cease and desist from:

6. Using the word 'Alpacuna', or any other word which in whole or in part is indicative of the word 'vienna', to designate or describe respondent's coats; or otherwise representing, directly or by implication, that respondent's coats contain vicuna fiber.

It Is Further Ordered that the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

It Is Further Ordered that no provision in this order shall be construed as relieving respondent in any respect of the necessity of complying with the requirements of the Wool Products Labeling Act of 1939 and the authorized Rules and Regulations thereunder."

3. Petitioner files this petition to obtain a review of the said order to cease and desist entered by the Federal Trade Commission on April 28, 1943; this petition being filed by virtue of the authority contained in Section 5 (c) of the Federal Trade Commission Act of September 26,

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Commission.

1914, c. 311, 38 Statutes 719, as amended by the Act of March 21, 1938, Chapter 49, 52 Statutes 111 (15 U. S. C. A. Section 45).

4. Petitioner relies upon the principle that the use of a mere trade name, which has become a valuable business asset, which is not deceptive per se nor proven by clear and convincing testimony to have had a tendency to deceive, should not be required to be discontinued.

Wherefore, Petitioner prays your Honorable Court to review the said Order of the Federal Trade Commission and set said Order aside.

s/ LEO WEINROTT
Leo Weinrott

s/ ROBERT T. McCracken
Robert T. McCracken
Attorneys for Petitioner.

COMMONWEALTH OF PENNSYLVANIA } ss:
COUNTY OF PHILADELPHIA }

JACOB SIEGEL, being duly sworn according to law, deposes and says that he is President of Jacob Siegel Company, the Petitioner above named; that he is duly authorized to make this affidavit on behalf of said corporation and now so does; and that the facts set forth in the foregoing petition are true and correct.

s/ JACOB SIEGEL
Jacob Siegel

Sworn and subscribed to before me this 11th day of June, 1943.

MARGUERITE M. WARD
(Seal) Notary Public
My Commission Expires:
March 6, 1947.

[fols. 659-660] IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent

SUPPLEMENT TO APPENDIX TO PETITIONER'S BRIEF—Filed
October 18, 1943

[fol. 661] BEFORE FEDERAL TRADE COMMISSION

TRIAL EXAMINER'S REPORT UPON THE EVIDENCE

The Federal Trade Commission issued the complaint on May 5, 1938, in the above proceeding, and caused it to be served on the respondent, charging the use of unfair methods of competition in commerce. The respondent filed its answer on May 26, 1938.

Pursuant to the order and designation of the Federal Trade Commission, the undersigned, theretofore duly designated a Trial Examiner by the Commission, heard testimony and received evidence on the charges in the complaint.

On November 5, 1938, before the completion of the evidence in support of the complaint, the Commission issued an amended complaint, charging the use of unfair methods and also the use of unfair and deceptive acts and practices in commerce. The respondent filed its answer to the amended complaint on November 19, 1938.

Thereafter, the undersigned heard testimony and received evidence on the charges in the amended complaint, and the taking of testimony in support of the complaint was concluded on January 23, 1940.

On May 16, 1940, the Commission, on the motion of its trial attorney, directed the issuance of a second amended complaint to conform to the evidence in the record, and ordered that the testimony theretofore taken be adopted and considered as testimony in support of the second amended complaint. The second amended complaint was issued on May 16, 1940, and respondent's answer was filed on June 4, 1940.

Thereafter, the respondent introduced testimony and evidence in opposition to the second amended complaint. [fol. 662] George W. Williams, Esq., is the attorney for the Commission.

Montgomery & McCracken, Esqrs., whose office address is at No. 1421 Chestnut Street, Philadelphia, Pennsylvania, are the attorneys for the respondent, and they were represented in this proceeding by Robert T. McCracken, Esq., and Leo Weinrott, Esq., of counsel.

The taking of testimony was closed on January 10, 1941, and the Trial Examiner submits this report upon the evidence, after full consideration of the second amended complaint, the answer of the respondent, and the evidence introduced.

Statement of Facts

(Note: The facts set forth below in Paragraphs I to VII, inclusive, are established facts. They are uncontradicted by any evidence.)

I

Respondent:

The respondent is a Pennsylvania corporation, with its office and principal place of business at No. 317 North Broad Street, Philadelphia, and it is now and it has been engaged, for about thirty years, in the business of the manufacture and of the sale of topcoats and overcoats (admitted—Complaint, Answer, pars. 1; R. 30).

II

Interstate Commerce & Interstate Competition:

The respondent is one of the leading figures in the overcoat field and it sold its topcoats and overcoats in interstate commerce in substantial competition with other sellers, who are and have been engaged in the sale of topcoats and overcoats in interstate commerce (admitted—Complaint, Answer, pars. 2; R. 798).

[fol. 663]

III

Fair Competition in Interstate Commerce:

Representatives of clothing manufacturers testified, respectively, that their principals made all wool overcoats.

sold them in interstate commerce, and represented them to be all wool (R. 319-322; 323-324).

IV

Respondent's Alpacuna Overcoats and Topcoats:

The overcoats, sold by respondent under the name Alpacuna, are made by the respondent from a fabric, made exclusively for respondent by a fabric manufacturer, of hair and wool, 70%, consisting of alpaca, 50% and mohair, 20%, the remaining fiber content being cotton, 30%. The 30% of cotton forms a back to the fabric, on which the hair and wool are knitted.

In developing the fabric it was first attempted to be made of an all-animal fiber content, with the back made of an all-worsted material. Then they tried to get a closer density of the hairs on the surface. It was recognized that worsted yarns are not spun as fine as cotton yarns, and with the cotton yarns it was found a denser hair and wool face could be produced, and thereafter a cotton back was used for the fabric of the Alpacuna overcoat. The idea of this cotton back was borrowed from nature, from the natural animal (R. 13; 1043-1044). The identity of the cotton back forming a separate part of the cloth fabric is clearly discernable upon inspection of the fabric. A piece of the fabric is in evidence as respondent's Exhibit No. 62 and may be inspected for this purpose.

In one of respondent's advertisements, introduced by the Commission (Comm's Ex. 1-G) is an illustration of the hide and hair of an animal, and an illustration comparing with that, the construction of respondent's overcoat fabric, [fol. 664] showing the cotton back, as taking the place of the skin of the animal, for the support or base of the hair fiber of the fabric.

Respondent's Alpacuna Topcoats:

The topcoats made and sold by the respondent, under the name Alpacuna, are made of fabric of the same composition as the fabric of the overcoats, except that there is no cotton back to the fabric of the topcoat. The fabric of the topcoat is a woven fabric, whereas the overcoat fabric is a knitted fabric. The topcoat fabric is made of alpaca 50%, of mohair 20%, and of wool 30% (R. 13).

V

Respondent's Own Advertisements of its Overcoats and Topcoats:

The respondent has made use of advertising matter descriptive of its Alpacuna coats, and their quality and desirability, consisting of swatch-books, newspaper advertisements and advertising copy for use by retail dealers, in dealer advertising.

Swatch-Books:

The swatch-books contain samples of the goods from which the coats are made, and a picture of a hemisphere, above which are the words, "From the four corners of the world". From points on this run four lines, on which appear pictures of animals and words, as follows:

1. Angora goat, with the words "Strength from the Asiatic Angora."

2. A sheep with the words, "Durability from the American sheep".

[fol. 665] 3. A Guanaco, with the words, "Silkiness from the Peruvian Guanaco", and

4. An Alpaca, with the words, "Richness from the South American Alpaca" (admitted—Complaint, Answer, pars. 3).

Respondent's Advertising Copy Furnished by it to Dealers:

The respondent furnished advertising copy to retail dealers, which the latter used in their newspaper advertisements, and which contained statements, as follows:

"Q. What is Alpacuna?

A. Alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guanaca, and Texas Sheep. . . .

"Studying the sources of the famous Alpacuna fabric is a real geography lesson. From the South American Andes we took the warm, light, silky hairs of the Alpaca. From the valleys of Old Peru we took the fine, lustrous coat of the Guanaco. From the plains of Turkestan we took the sturdy, durable hairs

of the Angora. From the Texas Panhandle we chose the thickest, warmest, and richest sheep's wool. They were all brought together, and scientifically blended into a fabric that's unmatched for richness, luxury, warmth, light-weight, long wear."

In other advertising copy furnished by respondent to retail dealers for the latter's newspaper advertisements, the name "Alpacuna" was featured, without qualification, or disclosure of the composition of the fabric (admitted—Complaint, Answer, pars. 3).

Dealer Advertisements:

In newspaper advertisements published by dealers in 1936, were statements, that the

[fol. 666] "Alpacuna fabric is woven from the soft, long silken hairs of the South American Alpaca—the Turkish Angora—and the Peruvian Guanaco" (Comm's. Ex. 53).

In newspaper advertisements published by dealers in 1937 were statements, as follows:

"From the South American Andes we took the warm, light, silky hairs of the Alpaca. From the valleys of old Peru we took the sturdy, durable hairs of the Angora. From the Texas Panhandle we chose the thickest, warmest, and richest sheep's wool. They were all brought together and scientifically blended into a fabric that's unmatched for richness, luxury, warmth, light-weight, long wear" (Comm's. Ex. 56; and see Comm's. Exs. 56, 57, 59, 65, 68, 69, 71; R. 181).

The slogan, "There is only one Alpacuna coat", appears in many of the advertisements of respondent and its dealers.

VI

"Alpacuna"—A Registered Trade-Mark in United States Patent Office:

On September 8, 1931, the coined word, "Alpacuna", was registered as a trade-mark for "men's topcoats, overcoats, and suits, in Class 39. Clothing", upon the application of Jacob Siegel, doing business as Jacob Siegel Com-

pany, his heirs or assigns, whose successor is the respondent corporation, Jacob Siegel Company. The statement was made in the application that the trade-mark was used and applied to the said goods in the applicant's business since on or about May 10, 1930, and also the statement that the trade-mark is usually applied or affixed to the goods by placing thereon a woven label on which the trade-mark is shown or by means of printed tags attached to the goods on [fol. 667] which the trade-mark is shown (Resp. Ex. 58; R. 1208).

VII

Fur or Wool Bearing Animals:

The Vicuna is a wild ruminant (Lama Vicugna) of the Andes from Ecuador to Bolivia, allied to the domesticated llama and alpaca. It is smaller than the guanaco, but like it, lives in herds and is fleet-footed. It has been much hunted for its wool and fur and is becoming scarce.—Webster's New International Dictionary, Second Edition, Unabridged, 1939.

The Guanaco is a South American mammal, related to the llama, but larger and more graceful and having a thick, soft, fawn-colored coat. It is supposed to be the wild form from which both the llama and the alpaca are derived.—Webster's New International Dictionary.

The Llama is any of several wild and domesticated South American ruminants allied to the camels, but smaller and without a hump; especially the domesticated variety of the guanaco (Llama Huanacos), used for centuries as a beast of burden in the Andes. Its coat is long and woolly, but coarser than in the alpaca. See Alpaca, Guanaco, Vicuna.—Webster's New International Dictionary.

The Alpaca is a kind of llama with fine long woolly hair, domesticated in Peru and adjacent countries. It is perhaps a variety of the guanaco.—Webster's New International Dictionary.

The Angora Goat is a variety of the domestic goat, reared for its long silky hair, which is the true mohair of commerce and differs from the wool of the sheep in not felting.—Webster's New International Dictionary.

VIII

(*Note:* Before setting forth the issues, the Trial Examiner states that the facts above set forth in Paragraphs I to VII, inclusive, are established without contradiction.)

[fol. 668] *The Issues:*

Based upon the advertisements of the respondent and of its dealers, furnished to them by the respondent, some of which are set forth above and others of which are in the record of substantially the same effect, but which, being cumulative evidence, are not referred to specifically herein, the second amended complaint sets forth the charges which constitute the issues, namely:

1. The trade-mark, Alpacuna, is a false representation to the public that there is at least a substantial quantity of the fur, wool, or hair of the vicuna in the fabric of which respondent's overcoats and topcoats are made (Complaint, par. 3);

2. The slogan, "There is only one Alpacuna coat", falsely represents that the topcoats and overcoats, to both of which it is applied, are of the same fiber content, and are the same in all particulars, excepting as to weight;

3. The respondent, outside of the use of the trade-mark, Alpacuna, falsely represents that the fabric of which the Alpacuna overcoats are made is an all-wool and hair fabric;

4. The respondent falsely represents that the fabric of which the topcoats and overcoats are made contains the foreign fur, hair, or wool of the guanaco, or vicuna, and also of the Angora goat from the plains of Turkestan.

5. The slogan, "There is only one Alpacuna coat" is a false representation in that respondent sells its coats to retail dealers who resell them under other trade-marks, for example, under the trade-mark "Alperu", in the same community in which another retail dealer resells respondent's coats under the trade-mark "Alpacuna". This latter charge is not made in the second amended complaint but the Commission's attorney questioned this practice in [fol. 669] the sale of respondent's coats and introduced some testimony in support of the charge.

IX

Further Evidence Regarding the Respective Issues:

As to the nature and extent of the representation made by the trade-mark Alpacuna and the slogan "There is only one Alpacuna coat," the Commission may take judicial notice of decisions of the courts, and the Trial Examiner refers to the following case:

In the case of Aladdin Mfg. Co. v. Mantle Lamp Co. of America, 9 F. Supp. 930, 25 T. M. Rep. 304 (D. C. N. D. Ill. 1934); reversed 78 F. (2d) 426, 25 T. M. Rep. 427 (C. C. A. VII, 1935), cert. den. 56 S. Ct. 173 (1935), the plaintiff, a manufacturer of portable electric lamps which were sold bearing the mark "Aladdin" sought to enjoin the defendant, a manufacturer of kerosene lamps, from extending the use of his mark "Aladdin" to portable lamps. The defendant argued that since it had used the word "Aladdin" on kerosene lamps and accessories long prior to the plaintiff, it now had a right to add portable lamps to its line of merchandise. The defendant had used the name "Aladdin" since 1908, whereas the plaintiff first began using it in 1920.

The Circuit Court of Appeals in reversing the decision of the lower court, directed itself to the issue of the "same descriptive properties," deciding:

"Granting that a kerosene mantle lamp could not compete with an electric lamp where that means of supplying artificial light was open to the purchasers, can we say that the public was not, and is not deceived by appellee when it marks its lamps 'Aladdin Lamp' and 'New Lamps by Aladdin'? Will not prospective purchasers be misled into thinking that the [fol. 670] company whose reliable products they have known or used for so long is keeping step with the new developments in methods of artificial illumination and that the new electric lamps are the products of the Mantle Company of America with whom they have come to associate the name Aladdin?

"* * * The function of a trade-mark is to point out descriptively the origin or ownership of the articles to which it is attached. The word Aladdin attached to a lamp manufactured by any company other

than the Mantle Lamp Company of America, regardless of the method by which light is produced therein must invariably deceive and confuse the buying public."

It is a fact that the respondent's Alpacuna overcoats were made and sold for some period of time prior to the time that it made and introduced to the retail trade and the public its Alpacuna topcoats (R. 39-40).

The respondent put in evidence certificates of the United States Patent Office, showing the registration of 23 different coined words ending in "una" or "cuna," respectively, as trade-marks applied by the owners to overcoats, topcoats, etc., Clothing in Class 39, including the trade-mark Valcuna (Resp. Exs. 1-23; R. 718).

The trade-mark Valcuna (Resp. Ex. 4) was applied to ladies' knitted dresses in Clothing Class 39. The respondent, Jacob Siegel Co., introduced in evidence a copy of the decision of the U. S. Assistant Commissioner of Patents (Resp. Ex. 36; R. 703-710) in sustaining the opposition of the owner of the trade-mark, Valcuna, to the registration of Goth-Cuna as a trade-mark. In his decision he said that

"both Valcuna and Goth-Cuna are purely arbitrary and meaningless expressions, and are hence more [fol. 671] likely to be confused than would be words in common use."

In another case the Assistant Commissioner deciding in favor of the opposition to registration of Ros-Cuna, said that

"Applicant suggests that 'Valcuna' is derived from the word 'vicuna,' which is the name of 'a small mammal of the Northern Andes having fine and valuable wool, and is also defined as a soft cloth made from such wool. That may be true, but even 'vicuna' is not a word in common use, and 'cuna' alone has no English meaning except as indicating a member of an obscure Indian tribe. In my opinion the word 'valcuna' is arbitrary and meaningless, as is likewise applicant's notation 'Ros-Cuna' " (Resp. Ex. 37; R. 703-710).

Besides the names ending in "cuna" or "una" registered as trade-marks (Resp. Exs. 1-23), there are a number of others listed in Respondent's Exhibits 38 and 39 which have appeared in advertisements (R. 711-712).

Witness Jacob Siegel, president of respondent, called by the Commission, testified that in the early part of 1930, the fabric in his opinion was the first introduced, and it was suggested that a name be coined for it; that various names were suggested and they derived the word from Alpaca, as it was used in very few men's clothes, and the sales manager thought of the word "una" meaning "one," and he arrived at the word Alpacuna to make people think there is only one fabric; that they did not have vicuna in mind; that he was not familiar with vicuna at that time, because there was none in respondent's fabrics; that they adopted the name "Alperu" because Alpaca comes from Peru (R. 31-34).

Witness Sol Weinberg, called by the respondent, testified that he has degrees from Temple and Pennsylvania [fol. 672] Universities and has attended Penn State and M. I. T. (R. 1040, 1064), and is a chemical engineer and a specialist in textiles; that he has been previously called as a witness in matters for the Commission, and that he is president of Industrial By-Products & Research Corporation, consulting engineers, consultants to fabric manufacturers and also to retail stores; that he developed the Alpacuna fabric; that he is always in the market buying fibers for the making of fabrics and, that the hair of the vicuna is so rare, it is not offered in the open market; that the Commerce Department reported that the last shipment was 2000 pounds, a two years' supply; that commercial Alpaca contains a mixture of some llama, some alpaca, and guanaco, and very often a little vicuna; that there might be half of the mixture as alpaca, and there might be 10 to 15% of guanaco in the mixture; that the mixture is a little over half of alpaca and the remainder a combination of fibers that are cross-breeds; and it is sold as Arequipa Alpaca (R. 1040-1042; 1058-1065).

The witness testified, as to mohair, that it is bought according to its diameter, the fineness of the hairs; that the fineness of the Texas goat is just as acceptable as that from the Angora from Asia Minor (R. 1076-1078).

The witness testified that he has seen the list of names in evidence ending in una or cuna, and was familiar with most of the fabrics having those names; that those he is familiar with have been analyzed in his company's laboratories and that he has never found vicuna present, except as a small tolerant of less than 5% (R. 1252, 1253).

Dictionary Definitions:

Some of the dictionary definitions give a second meaning to the word "vicuna" as being "short" for "vicuna cloth." In *Technical Terms* published for the textile trade by E. Midgley, 1931-1932, is the following:

"Vicuna.—Originally made from vicuna hair which [fol. 673] provided the resultant texture with a handle characteristic of the raw material employed. The limited supply of this material has been responsible for this type of cloth being successfully imitated in wool materials. The wool fabrics are so treated during dyeing and finishing, particularly in the milling and raising process, to cover the ready appearance of the cloth with a dense short erect pile of fibers. This particular appearance in wool cloths is known as the vicuna finish.
* * * (Resp. Ex. 34).

Witness Millard D. Brown, president of Continental Mills, fabric manufacturers, who make the alpacuna fabric, testified that he saw vicuna overcoats advertised in Philadelphia in 1939 for \$900 at retail and he saw one for \$750 and one which sold for a couple of hundred (R. 25). (There is in the record statements of witnesses to the effect that not more than five or six overcoats are made in the United States in a year or two).

The respondent's overcoats retail at about \$40.

From the Oxford English Dictionary is taken the following:

"Vicuna cloth, cloth of vicuna wool; vicuna wool;

(a) wool or fur of the vicuna;

(b) a mixture of fine wool and cotton" (Resp. Ex. 31).

From Webster's New International Dictionary Unabridged, 1939, under the term vicuna is taken the following:

"Vicuna—1. a wild ruminant (*Lama Vicuina*) of the Andes * * * has been much hunted for its wool and fur and is becoming scarce.

[fol. 674] 2. Short for vicuna cloth, a very soft woolen fabric, usually twilled and napped, made from the wool

of the vicuna or an imitation of it made from fine marino wool" (Resp. Ex. 29).

The following dictionary, Funk & Wagnal's New Standard, (Resp. Ex. 28), Encyclopedia Britannica, 14th Edition (Resp. Ex. 30), Standard Dictionary (Resp. Ex. 32), and several dictionaries of textiles and technical terms, trade terms and writings on fabrics (Resp. Exs. 33, 34 and 35) are in evidence with the same definition of vicuna as applied to cloth that the Oxford English Dictionary and Webster's International have.

Webster's International Dictionary has the following:

"Alpaca—1. a kind of llama with fine long woolly hair domesticated in Peru and adjacent countries. It is perhaps a variety of the guanaco.

2. Wool of the alpaca.

3. A thin kind of cloth made of the hair of the alpaca often mixed with silk or with cotton. Much of the cloth sold as alpaca is really mohair.

(b) A garment made of this cloth."

Also in Webster's International is the following:

"Mohair—1. a fine camlet made from the hair of the Angora goat, or an imitation of such fabric, now usually a smooth lustrous one of wool and cotton mixed; also yarn of this hair.

2. A garment of this fabric.

[fol. 675] 3. The long silky hair of the Angora goat."

Respondent's Exhibit 42 is a piece of cloth called vicuna finish cloth, a well known finish in the trade but having no vicuna hair in it. Respondent's Exhibit 43 is almost pure vicuna. There is a little llama wool in it, and Respondent's Exhibit 44, the witness who produced it testified that it was supposed to be pure vicuna for topcoating. The same witness testified that cloth made from pure vicuna hair is very rare, is very expensive and is very little used (R. 901-903).

X

Testimony of Trade & Consumer Witnesses On the Interpretation of Respondent's Advertisements:

Witness Millard D. Brown, president of Continental Mills, the manufacturer of the Alpacuna fabric, called by the Commission, testified that the mohair of the fabric comes principally from Texas; that at no time was Turkistan mohair in the fabric (R. 3-5); that the Vicuna is a wild animal of South America and very little of its hair or wool enters into commerce; that it is one of the finest fibers in quality, in feel, in the world (R. 6).

The witness testified that he did not know where the word Alpacuna comes from; that it was a child of Mr. Siegel's and Mr. Appel's brain (R. 10).

The witness was asked.

“Q. What would the compound word be derived from, according to your knowledge of wool-bearing animal?

A. I haven't any knowledge of that.

Q. Sir?

[fol. 676] A. I haven't any knowledge of what they put in it or what they had in mind when they did it.

Q. What would that convey to you, sir?

A. As a man who handles those fibres, I would naturally think it was a combination of Alpaca and Vicuna.

Q. So the ‘Alpaca’ comes from Alpaca and the ‘cuna’ comes from Vicuna?

A. I suppose it does.

Q. Can you imagine where else it would come from?

A. Not with my knowledge of fibres.” (R. 10-11)

The witness testified that in the bales of Alpaca purchased by him there are at times Guanaco hair (R. 20); that the Vicuna content of any coat would lend additional value (R. 24); that there are only two manufacturers in the United States who ever get any Vicuna, and they make only a few yards each year (R. 25); that if there was any Vicuna in the Alpacuna coats, it was there by accident (R. 28); that he had never seen an ad that indicated there was Vicuna in the overcoats (R. 29).

Witness Jacob Siegel, respondent's president, called by the Commission, testified that his sales manager, in early 1930, suggested that a name be coined for the overcoat to distinguish it by trade name, and with the thought that very few men's coats used Alpaca, they derived the word Alpacuna from the name Alpaca, and they thought they couldn't use that name because it was descriptive and couldn't be registered, so the sales manager—who was well versed in Latin, thought of the word “una”, saying it means “one”—one manufacturer, who is the first to make that coat, and the sales manager translated it in English as “there is only one Alpacuna” (R. 32-33); that he was in business thirty years and only in the last five or six years heard of Vicuna (R. 34); that the name Alpacuna is not descriptive; that it is mixed. A part of it [fol. 677] comes from Alpaca; that they started with the name Alpaca and that was pretty descriptive (R. 35-36); that if the name Vicuna was used in connection with the overcoat, it was not to his knowledge (R. 40-41).

(*Note:* In respondent's answer to the original complaint the statement is made:

“A few early advertisements represented that Vicuna was contained in the fabric but this was corrected and such advertisements discontinued several years ago.”)

The same statement was made in the answer to the first amended complaint.

In the answer to the second amended complaint, the respondent alleged:

“An examination by respondent of its files and advertising copy does not reveal any advertisements using the word ‘Vicuna’, and if there were any such advertisements, if same is material the respondent demands proof thereof.”

Counsel for the respondent, Leo Weinrott, called by respondent, testified that he was familiar with all the advertising of respondent; that during the preparation of a proposed stipulation of facts, the then trial attorney for the Commission incorporated in the proposed stipulation (Resp. Ex. 55), the statement referred to above, that is in the answer to the original complaint, and that the witness objected to its inclusion. In a letter (Resp. Ex. 56)

to the then attorney for the Commission, dated September 30, 1938, the respondent's representative wrote that:

"you also requested exhibits of newspaper advertising in which the word 'vicuna' is used prior to 1934 but unfortunately we have not been able to find such advertising copy."

[fol. 678] The record here does not appear to have any such advertisement of respondent in which the word vicuna was used.

The Commission called a number of trade witnesses to interpret the advertisements of the respondent with reference to the word Alpacuna, among them the following:

Witness Alfred D. Egendorf, Director of Merchandise Research of Lit Brothers, Philadelphia, testified that he was familiar with the Alpacuna overcoat; that they had the coat in Lit Brothers store under the name of Alperu (R. 81); that as a potential purchaser of overcoats after reading the advertisement (Comm's. Ex. 3-C), as one who knew nothing of the coat, he would infer that the coat was made of Alpaca; that divorcing his business information of the coat, the most logical thing for the public to recognize would be Alpaca and to believe that it was an all-wool overcoat and that there was nothing in the advertisement that would make him feel, as a member of the public; that it was composed of anything but wool (R. 83-86); that the advertisement (No. 105 on Comm's. Ex. 2) was substantially the same as the advertisement (Comm's. Ex. 3-C); that the ad has a picture of some sort of animal of South America which might be Alpaca because they spoke of the Alpaca living in the Andes (R. 87); that there was nothing in the ad which would indicate that the coat was composed of any material other than wool.

"Q. Then, in this enlightened age, when we have our schools, teaching children physical geography, and what not, don't you think there would be a number of people who would know about the Vicuna Llama and the Alpaca?

A. The Alpaca, I am fairly certain, there will be a certain number. As to the Vicuna, probably a smaller number."

[fol. 679] *The witness* testified that one familiar with fur bearing animals might pick from the name the combination Alpaca and Vicuna and that as an ordinary citizen if he saw that name in a store he would not recognize more than Alpaca since it is the only word stated in the advertisement; that as to the "una", of course, he knew the answer, but that the average customer reading the ad would probably believe the coat was made entirely of Alpaca, because the ad says "Alpacuna overcoats come from Alpaca hairs" (R. 88-89); that looking at another ad (Ad 103 on Comm's. Ex. 2), which says that "the alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guanaco, and Texas sheep" that he would probably understand as a member of the public that the Guanaco element was more than an accidental amount and would be probably over 2%; that he would not understand the durable hairs of the Angora would come from Texas because it says from the plains of Turkestan (R. 90); that the ad line (Ad 104 of Comm's. Ex. 2), "There is only one Alpacuna coat" would mean something like saying "there is only one Cadillac"; that there is only one article known by that name (R. 91); that if the Alpacuna coat goes out under a different name (Alperu), I don't consider it the same (R. 91-92); that speaking as a consumer regarding a preference between Vicuna wool and ordinary wool in the Alpacuna coat I would not think there would be any consumer preference in that price range because Vicuna is relegated to the select few and is something that most people are not concerned with (R. 93).

Witness Roy Clark, Publicity Director, Strawbridge & Clothier of Philadelphia, testified that the name Alpacuna (Ad No. 104 in Comm's. Ex. 2) was one that the general public would infer had a content of Alpaca and Vicuna (R. 102); that he saw no objection to the ad line "there is only one Alpacuna coat"; that it was a legitimate advertising phrase (R. 102-103); that in all his experience [fol. 680] with his firm he had only seen one Vicuna overcoat; that the one his firm had was priced at \$600 or more and that no one paying \$40 for an overcoat would expect to get much Vicuna in the coat; that it was in his mind that they would expect to get a little if they were told there was Vicuna in the overcoat (R. 107-108); that from his own knowledge of the Alpacuna garment he would be under the impression that it had vicuna in it (R. 110).

Witness J. M. Kelley, Clothing Salesman for John Wanamaker, Philadelphia, for eleven years, testified that as a potential customer for an overcoat that he would gather from the advertisement (Comm's. Ex. 3-C) that the coat was woven from Alpaca, but that it indicates it would be combined with some kind of vicuna content, which, possibly because of the price, he would interpret as being a very minute quantity of vicuna; that it contained just enough vicuna so that they could use the name Alpacuna (R. 114-115); that speaking for himself he would have a little knowledge of vicuna and that is the reason why he would not infer from the name that it was a combination with vicuna in it (R. 116).

Witness Ephraim Freedman, Director of Macy's Bureau of Standards, New York City, testified that the ads (Comm's. Exs. 30 and 36) would indicate that the coat was made of a combination of Alpaca and Vicuna fiber (R. 182, 185).

Witness Frederick Schmertz, associated with John Wanamaker's legal department for 33 years, testified that the word Alpacuna in the advertisement (Comm's. Exs. 30 and 36) conveyed to him a combination of Alpaca and Vicuna (R. 201).

Witness Henry J. Heims, vice president of Finchley, Inc., Fifth Avenue, New York, buyer for twenty years, testified that he would get the impression from the ad (Comm's. Exs. 30, 36) that it has vicuna and alpaca in it (R. 206-208).

Witness Robert N. Campbell, with Rogers-Peet Co. of [fol. 681] New York City, manufacturers of coats, men's and boy's clothing, testified that being in the trade he would come only to one conclusion, that the ads (Comm's. Exs. 30 and 76) would mean that the coat was made from wool taken from the two animals referred to, Alpaca and Vicuna; that that has been the understanding in the trade and whether or not the individual on the street would come to that conclusion, of course, is a different proposition (R. 269-272).

Witness Victor S. Riesenfeld, with Cohen, Goldman & Company, manufacturers of New York City, testified that the common understanding is that Alpaca is another type of wool; that he heard about vicuna pro & con on the morning of the hearing and would say that vicuna is a very

rare wool and that the name Alpacuna would not register particularly; that the principal thing with him in the name was Alpaca and that the name signified to him a lot more that morning than any other time; that from the morning's connotation the name would mean a combination of alpaca and vicuna (R. 323-325).

Witness Max Ullman, Secretary of Ullman Brothers, manufacturers of topcoats and overcoats, New York City, testified that his company made all wool overcoats under the name Andecuna, a coined word and that the "cuna" was coined from the animal; that he would say the first part of the name comes from the Andes Mountains; that the "cuna" he would say would be more or less of a coined name and that he would not say it applies to any particular fiber or animal; that you can take any animal at all and call it a cuna; that there is no such animal and no such word; that they were not thinking of vicuna when they thought up the name Andecuna; that probably it was used to emphasize the softness of a woolly fiber; that he connects softness and that sort of thing with the name "cuna" associating it with the animal Vicuna (R. 328; 332-333).

Witness Jerome Saks, of the Saks Fur Company of New York, dealers in furs and cloth coats, testified that looking [fol. 682] at the ad (Comm's. Ex. 49) which carried the word Alpacuna that he wouldn't say the ad contained anything as to fiber content; that he had heard of the cuna and vicuna; that the word Alpacuna as it stands in the ad, he would say contains some idea or some part of these animals, the alpaca and vicuna; that his firm handled a certain type of cloth coat that contains vicuna; that taking the ad on its face he wouldn't necessarily say you would find vicuna in there; that he would say that there was something pertaining to it or that and like it. On cross-examination the witness testified that his interpretation of the word Alpacuna is that it is a coined word you started; that there is nothing in the advertisement before him that refers either to the alpaca or vicuna; that there is no mention of either animal in the advertisement and that he did not gather from the word Alpacuna any warranty by the manufacturer that that garment contains either true alpaca or true vicuna hair (R. 351-358).

Witness Arthur Levy, clothing buyer with Raleigh Haberdasher, Washington, D. C., testified that looking at

the ad (Comm's. Ex. 49) it does not tell him anything about fiber content; that it is a trade name made from alpaca and vicuna; that the ad does not tell him that the cloth of the overcoat contains that particular hair (R. 359-362).

Witness W. B. Garbiss, buyer at Saltz Brothers, dealers in clothing and furnishings, Washington, D. C., testified that looking at the ad (Comm's. Ex. 49) he would say it was a coined word; that the word alpaca would dawn on him the first word and he would say the word vicuna was altered which would give the impression of two different pieces of goods; that vicuna is a very expensive material running from \$15 to \$80 a yard and if he read this ad price \$40, he would say there would be very little vicuna in the coat and it wouldn't impress him as being any part of vicuna; that the advertisement would not lend itself to the construction of a person selling it caring to emphasize [fol. 683] size vicuna, but that he would be impressed that it was alpaca (R. 364-368).

Witness William H. Raubach, clothing salesman with Raleigh Haberdasher, for five years, testified that he could not draw any inference from the ad (Comm's. Ex. 49) as to the fiber content of the overcoat; that the word Alpacuna is a coined trade name (R. 376-378).

Witness Leonard Gilman, of the Toggery Shop, Arlington, Virginia, dealers in men's wear and clothing for fifteen years, testified that looking at the three photographs (Comm's. Exs. 77, 78 and 79) in which coats were displayed with the name Alpacuna showing in the photographs, testified that Alpacuna coat would mean that it should contain alpaca and vicuna cloth and also the same with respect to the ad (Comm's. Ex 84) (R. 462-468).

Witness Walter Nordlinger, with The Mode, Men's clothing and furnishings store in Washington, D. C., testified that with respect to the photographs (Comm's. Exs. 77, 78 and 79) that he would get the implication that the coat had a vicuna content (R. 476-477).

The Commission called a number of members of the public for their interpretation of respondent's advertisements in evidence particularly with respect to the word Alpacuna.

Witness Mrs. Polly Kessinger Moore, Assistant Professor of Textiles and Clothing, University of Maryland, testified that her subject "Textiles and Clothing" covers

the construction of various garments, the identification of fibers and finishing processes and each fiber is taken up individually, the countries producing it and the chemical and physical appearance of the fibers in class work, lectures and laboratory; that she was familiar with the Alpaca, Guanaco and their habitat was South America; that the laboratory part of the work on the fibers is very little in connection with wool fibers; that the picture of an Alpaca appears in the texts used in her class work and she was not certain that the vicuna appeared there; that the [fol. 684] only place in which the vicuna appears is in books used supplementary to the text books; that she would assume that the Alpacuna would be a combination of alpaca and vicuna; that she would question the price of the coat for she knew the price of the vicuna. It is rather an extinct animal. On cross-examination the witness testified that she said previously in her testimony that when a trade name is coined and registered in the Patent Office it may not contain the fibers you expect it to contain from its sound. The reason for that was that she had in her possession a sample of Valcuna and the girl bought it and was amazed at the price of \$35.00 and the girl thought it was a vicuna and because they had studied it in class (R. 402-411).

Witness E. J. West, a construction engineer of Washington, D. C., upon reading the ad (Comm's. Ex. 84) which contained the word Alpacuna, testified that he thought it would be a coat the fabric of which was made from some sort of animal and that there would be alpaca and vicuna in it (R. 412-413).

Witness Mrs. Rose Hardy, housewife, part-time teacher, testified that upon reading the ad (Comm's. Ex. 85) she would expect to find the fiber content of alpaca and vicuna (R. 418-419).

Witness Harriet R. Howe, housewife, and two days a week does professional work for the American Home Economics Association, in practices which affect the consumer in the economic order, and in efforts to make the public label-and-advertising-conscious, and includes fiber identification. Witness testified that from reading the ad (Comm's. Ex. 16) she would suppose the fiber content was wool from the alpaca and vicuna (R. 421-426).

Witness Mrs. Ernest Wm. Howard, housewife, of Washington, D. C., and department chairman of legislation of the District Federation of Women's Clubs which has about 6,100 members, testified that she was interested in respondent's advertisements and went to Kann's Department [fol. 685] Store with respect to Alpacuna coats and that she asked the salesman what it was made of and he said that the Alpacuna was from the alpaca of the Andes Mountains and "una" meaning "one", and that it sold for \$40.00 (R. 436-440).

Witness Miss Helen E. Creighton of Arlington Hall, Virginia, Junior College Professor in Economics and Mathematics, and assistant on the Law Library staff of George Washington University, testified that she first became acquainted with the word vicuna when she studied geography 18 years ago and that she comes in contact with that word in her present work in teaching about import trade of Chile, Peru, and the Argentine; that the meaning of the word vicuna is in Atwood's Geography and the Consumers' Book on Textiles and she refers inquirers to the Encyclopedia Britannica and the World Book and the January issue of the magazine "Fortune" and there is a book called "The Jungle" that tells about it; that on reading the ad (Comm's. Ex. 85) the trade name would indicate that it would be a combination of alpaca and vicuna (R. 452-457).

Witness Prentiss Willson, a physician in the Farragut Building, Washington, D. C., testified that the photographs (Comm's. Exs. 77, 78 and 79 gave him the impression that the coats advertised were made of alpaca and vicuna (R. 500-501).

The witness on cross-examination testified that his first contact with the word "Alpacuna" came through a letter that he received from the Federal Trade Commission asking his impression as to the meaning of the word and that he answered the letter "essentially as I have now"; that he didn't even know that vicuna was an animal and that to him the word would mean a very fine wool cloth and that was all, and without knowing what animal it came from he would assume that it came from some particular kind of sheep; that looking at the mat of an advertisement (Exhibit C attached to respondent's answer) with the date [fol. 686] line April 6, 1938, showing the same kind of description as in the ad (Resp. Ex. 25) published December

4, 1939, he would say that the definition and description of what is in the garment was an honest and clear definition and description and that looking at the ad (Exhibit C attached to respondent's answer) he might wonder why these proceedings were brought at all after that advertisement of almost two years ago (R. 502-507).

Witness Gary Triplett, operator of men's clothing store, Arlington, Virginia, testified that as to his impression from the photographs (Comm's. Ex. 77) as to the fiber content of the coats exhibited that the only thing was, that he wouldn't know anything about alpaca and that he knew that vicuna was wool from a South American animal because he happened to buy a coat of that type and he gathered from the ad that there was some vicuna wool in it; that he purchased the coat at the store of Thornton & Howe in New Haven, Connecticut, and he happened to ask what the alpacuna coat was and he was told that it was wool from a vicuna; that not knowing what alpaca was his deduction would be that the coat was made of some vicuna cloth (R. 525-531).

Witness Robert Koontz, called by the Commission, buyer of men's clothing, connected with Woodward & Lothrop, Washington, D. C., for 27 years, examining pictures of a store window (Comm's. Ex. 77) and the articles shown, testified that the word "Alpacuna" would only identify certain manufacturer's coats, as a registered name; that he had always known the fiber of that coat and that the name would not make any impression on him; that he knew, of course, that they put cotton in the overcoat to give it strength and weight; that aside from his actual knowledge of the coat he personally never gave the name Alpacuna any thought; that at no time, during his contacts with that coat was the fiber content of it represented to him; that if he saw a topcoat and an overcoat of the same name he would not expect [fol. 687] to find the same materials in them because of the difference in weight; that the fact that a man makes an Alpacuna overcoat with a cotton back does not prevent him from making an Alpacuna topcoat without a cotton back (R. 510-517).

Witness Clarence Grosner, called by the Commission, president of Raleigh Haberdasher, Washington, D. C. since 1911, testified that he was only familiar with the Alpacuna coat in general terms; that he did not know the content of the cloth in the coat; that if he had previously written

to counsel for the Commission what the composition of the Alpacuna coat was, he only had the information from hearsay; that he stated in the letter to the Commission that the cloth was composed of sheep wool, vicuna, alpaca, and guanaco; that to him the word Alpacuna means nothing but a trade-name (R. 533-551).

Witness S. E. Cohen, retail clothing dealer, Arlington, Virginia, called by the Commission, examined photographs of a store window (Comm's. Exs. 77, 78 and 79) showing coats carrying the name Alpacuna and testified that he saw no implications there as to the fiber content; that the name Alpacuna doesn't mean anything except that clothing manufacturers make the coats. For example, Greif & Brother use the trade name "Angopaca", etc. that he was familiar with the coined word Alpacuna and was not familiar with the word "vicuna" and gathered no implication from Alpacuna as to fiber content; that he regarded it simply as a trade name; that, having his attention called to the fact that he was interviewed by a representative of the Commission, and at that time gave his idea as to the meaning of the word, he did not desire now to change his testimony (R. 553-560).

Witness Nathan Koshland, with Hamburger & Sons, Baltimore, Md., assistant buyer in the clothing department and in that business for 35 years, being shown an advertisement of Kann's Department Store, Washington, D. C., March 29, 1938, in the Washington Star (Comm's. Ex. 98), noticed the name Alpacuna and the animal depicted as part of the [fol. 688] trade-mark and testified that the implication to him was that it was a trade name and a hair fabric; that he did not know what the hair was; that he would understand Alpacuna to be derived from alpaca, mohair, and llama; and never heard of "cuna" and couldn't define it; that he had heard of vicuna but not of cunã; that his concern recently had a vicuna coat in their store window at \$750 (R. 574-582).

The testimony of other witnesses, including representatives of Better Business Bureaus is not referred to herein, because it is cumulative.

Referring to the advertisements above mentioned it was omitted to be stated that the respondent furnished a mat service containing copies or suggestions of copy for advertisements for retail dealers. There is no evidence that these particular ads in the form in which they are found

in the mat copy (Comm's. Exs. 1-A to 1-I) were ever published as shown in the mat service. Some of these suggested ads contain the price \$40 for the overcoat and reference to its use on sub-zero days. Some have the circular trade-mark showing pictures of an animal in it and some have a representation of the coat of an animal with hair attached to the hide and showing the hide as distinguished from the hair. In comparison with the animal coat there is an illustration of the construction of the Alpacuna coat, the blended rare animal hair fibers and fine virgin wool being represented to be on a cotton backing which takes the place of the hide of an animal.

Respondent's Trade & Consumer Witnesses:

The respondent called a number of witnesses amongst which were the following:

Witness Albert M. Berg, who was associated with Arnold Constable & Company, of New York, as vice president and merchandise manager, including having charge of [fol. 689] men's clothing. Arnold Constable is a store with a 115-year reputation (R. 728). The witness testified that he was quite familiar with the Alpacuna overcoat and topcoat; that the overcoat contains alpaca, mohair and wool and has a cotton back. The topcoat contains those fibers and has no cotton back and the overcoat is his concern's best selling overcoat they being the first to introduce it in the market about nine years ago; that the word Alpacuna means simply a trade name, and that being interested because it was one of their best selling coats and because of Arnold Constable reputation for 115 years, which they were anxious to keep for another 115 years, he made it his business to conduct a survey of the customers in the clothing department to ascertain what they understood Alpacuna was; that he interviewed about 250 customers and in connection with his survey had a printed form, did not take their names but was simply interested in what their answers were, rather than where they lived and wrote down their answers; that the form of his questionnaire is Respondent's Exhibit 40 and that in about 95% of the customers questioned the answer was that the word Alpacuna signified a trade name and nothing else; that of the remaining 5% or 6% some customers said it meant an Alpacuna coat, some an overcoat, some that it meant a soft coat and some that

it meant a hair coat, and the answers that he wrote down are in Respondent's Exhibits 41-A to 41-Z (R. 724-735).

Witness Sylvan F. Friedman, manufacturer of men's clothing, Fifth Avenue, New York, manufacturing overcoats, testified that Alpacuna meant a trade name and did not indicate the fiber; that it is a well known trade name and that in general the "una" has been so successful that there is no doubt most of the "cuna" or "una" have been used on that basis; that is, as meaning a hair cloth or soft cloth; that the cotton backing is one of the better features because it allows the pile to be on top rather than through and through; that he was familiar with vicuna cloth; that [fol. 690] the word means soft and a nice lovely feel (R. 771-774).

The witness testified as to the slogan "There is only one Alpacuna" that he did not see why a manufacturer was not justified in advertising a topcoat and an overcoat under one name; that it was the manufacturer's privilege (R. 778-779).

Witness Lester J. Baron called by respondent, testified he was associated with Goostein Brothers & Company, manufacturers of topcoats and overcoats; that he was a graduate of Philadelphia Textile School; spent about two years in practical experience in mills, spent a year and half as textile analyst with United States Customs, in the Appraisers of Merchandise Division in New York City, and was for the last sixteen years a woolen buyer for various clothing concerns; that he was familiar with the term vicuna as applied to cloth; that it may mean one of two things, either a fabric entirely or in part of vicuna, or any soft fabric of a soft luxuriant handle; that the vicuna cloth is made of any one mixture of numerous mixtures of hair fibers in combination with wool; that the dictionary definitions in using the name vicuna in more than one category agreed with his knowledge of the trade where such fabrics are concerned; that the name Alpacuna may be used for alpaca or as a trade name for mohair; that the name Alpacuna was a trade name indicative of a garment made by respondent as distinguished from garments of a similar nature made by other manufacturers and means nothing else to him that "Mr. Siegel's clothes"; that the trade names ending in "cuna" only indicate a soft, luxurious fabric (R. 783-790); that with respect to the phrase "There is only one Alpacuna" there is a slo-

gan with one of the automobile concerns "There is only one Buick" and that company makes automobiles from \$900 up to \$5000 with a big difference in the quality and manufacture of the machines, yet they are all "Buicks" (R. 797).

[fol. 691] The following, called by the respondent, testified substantially as the preceding witnesses:

Witness Benjamin Larkey, in business as Larkey Company, retail clothing dealers in Newark, Passaic, and Paterson New Jersey (R. 800-811).

Witness Daniel Rheinauer, manufacturer of knitted outer wear under the name New York Knitting Mills, Inc. (R. 812-825).

Witness Michael Kaplan, in business under the name Gloversville Knitting Company, Gloversville, New York, manufacturers of hair cloth topcoats, woolens, etc., who testified that Alpacuna meant to him an alpaca coat with a soft feel and that "cuna" meant "finish" to him (R. 825-838).

Witness Arnold Schneider, of Schneider & Armitage, fabricators of knit and woven cloth for 35 years (R. 839-867).

Witness J. Frank Armitage, a partner of the preceding witness, Mr. Schneider an Englishman by birth, who attended Technical College, Bradford, England; was for 15 years associated with various mills, and for the last 14 years was engaged in the selling and distribution of fibers to the clothing trade, both suitings, topcoating and overcoating, testified that the word "Alpacuna" meant simply a trade mark and that the ending "una" or "cuna" had no significance as to the kind of fabric (R. 869-876).

Cotton Back on the Overcoat:

Witness William H. Hoffman, in the carpet and rug business with Gimbel Brothers, and employed in that department for 34 years, testified that a carpet is sold as a wool article if the face is all wool; that the face is the determining element for all wool; that the Wilton construction is made with cotton and jute as a backing, and velvet carpet is made with cotton and jute as a backing; that there are carpets called Chenille that have a wool back as well and some very fine carpets have a linen back and they are sold

[fol. 692] as wool carpets. Respondent's Exhibit 61 was examined by the witness and he testified that it is a Wilton carpet, so woven that the surface is all a complete unit right down to the place where the fibers reach the backing and everything above the backing is wool; that the backing on the piece of Alpacuna cloth (Resp. Ex. 62) is different from the face and is the means of holding the face of the cloth together (R. 1235-1247).

The testimony of a few other witnesses called by respondent is not specifically referred to because it is cumulative.

Respectfully submitted, Edward E. Reardon, Trial Examiner.

Note: The trial examiner's report is not a report or finding of the Commission. Such report is advisory only and is not binding upon the Commission.

April 12, 1941.

EER:PB.

[fol. 693] BEFORE FEDERAL TRADE COMMISSION

Exceptions of Jacob Siegel Co. to Trial Examiner's Report
upon the Facts

Now Comes, Robert T. McCracken, Esq., on behalf of Jacob Siegel Company, and excepts to the Trial Examiner's report, and as grounds for said exceptions shows:

1. That the Trial Examiner in Paragraph IV, on page 3, reports that the overcoat fabric was composed "of hair and wool, 70%, consisting of alpaca, 50%, and mohair, 20%, the remaining fibre content being cotton 30%". This would be somewhat clarified if it read as follows: "of hair and wool 70% (consisting of alpaca, 50% and mohair, 20%, and wool, 30%); the remaining fibre content being cotton 30%".

2. That the Trial Examiner, in Paragraph VIII, on page 8, erroneously reports that there was at issue in this case the question of whether the use of the slogan "There is only one alpacuna coat", was improper when it appeared that respondent sold the same coat under the name "Alperu". No complaint was made in either the original,

first amended, or second amended complaints filed by the Commission's attorney with respect to this matter, and hence any testimony introduced on this subject should properly be disregarded; and, further, as numerous witnesses testified, it is a common practice to put out the same article under different names (R. 929, R. 998, R. 1225, 1226), and as testified by Charles Weinstein, Vice President of C. I. O., this practice is essential to obtain volume production (R. 1225, 1226); and the phrase "There is only one alpacuna" like the phrase "There is only one Buick" or "There is only one Bayer Aspirin", means merely there is only one line of articles of that name (R. 91, 103, 120).

3. That the Trial Examiner in Paragraph X, on page [fol. 694] 28, erroneously reports "that the name alpacuna may be used for alpaca or as a trade name for mohair". Said finding should read "that the name alpaca may be used to describe alpaca or as a trade name for mohair" (R. 786).

4. That the Trial Examiner erred on repeated occasions in overruling objections of counsel for the respondent to the interpretations by witnesses of advertisements which speak for themselves, and similarly erred in overruling counsel for respondent's motions to strike out such testimony (R. 199, R. 207, R. 219, R. 229, R. 248, R. 250, R. 259, R. 271, etc.)

5. That the Trial Examiner failed to report that the word "vicuna" means a soft fabric usually composed of wool and cotton, and has continuously had that meaning for upwards of thirty-five years; that the Standard Dictionary, 20th Century Edition, 1904, defines vicuna as follows (Respondent's Exhibit 32, R. 700):

"Vicugna, Vicuna: a small cameloid mammal of the high northern Andes having fine and very valuable wool.

"Vicugna-cloth, Soft cloth made of vicugna-wool-vicugna-wool.

1. A mixture of wool and cotton: used for soft fabrics.

2. The wool of the vicugna."

that the Oxford English Dictionary of 1916 contains the following (Respondent's Exhibit 31, R. 699):

"Vicuna: 1. A South American animal closely related to the Llama and alpaca, inhabiting the higher portions of the northern Andes and yielding a fine silky wool used for textile fabrics.

"2. Vicuna cloth; also a garment made of this.

[fol. 695] "3. Vicuna-cloth, cloth made of vicuna-wool; vicuna wool, (a) wool or fur of the vicuna; (b) a mixture of fine wool and cotton."

that Funk and Wagnals' New Standard Dictionary of 1939, contains the following (Respondent's Exhibit 28, R. 696):

"Vicugna, vicuna, A small cameloid mammal of the high Northern Andes, having fine and very valuable wool; vicugna-cloth, soft cloth made of vicugna-wool; vicugna wool. 1. A mixture of wool and cotton; used for soft fabrics. 2. The wool of the vicugna."

6. That the Trial Examiner failed to report that Commission's witnesses testified as follows:

Witness Mrs. Ernest William Howard, Department Chairman of Legislation of the District Federation of Women's Clubs, testified the name alpacuna signified to her "nothing other than alpaca" (R. 452).

Witness Ludger Rinfret, Jr., of Huxler Bros. Company, leading Baltimore department store, testified the name alpacuna signified nothing to him as to the material content of the coat (R. 593).

Witness Thomas P. Abbott, President, Stewart & Company of Baltimore, a department store, testified that the name alpacuna meant nothing whatsoever to him beyond the trade name (R. 615.)

7. That the Trial Examiner failed to report that Commission's witnesses testified as follows:

Witness E. J. West (whose testimony is reported by the Examiner on page 22), testified that on examining respondent's Exhibit 26 he would clearly know the content of the coat and that no vicuna from the animal in it.

Witness Mrs. Rose Hardy (whose testimony is reported by the Examiner on page 22), testified to the same effect (R. 420); so did *Mrs. Harriet R. Howe* (whose testimony [fol. 696] is reported by the Examiner on page 22) (R. 426 and 427). and *Mrs. Gary Triplet* (whose testimony is reported by the Examiner on page 24) (R. 533).

8. That the Trial Examiner failed to report that Commission's *Witness Victor S. Riescnfeld* testified that it is usual to full line overcoats (R. 327-328); (see also testimony of *Louis S. Potsdamer* (R. 1024), *Charles Weinstein* (R. 1229) etc.)

9. That the Trial Examiner failed to report that the following witnesses testified for respondent:

Witness Esther Cole Richardson, Director of the Consumer Relations Bureau at Gimbel Brothers, Philadelphia, who testified it was her duty to represent the consumers' attitude toward everything in the store (R. 921); she constantly lectures to consumer groups three or four times a week (R. 934); that the name alpacuna meant to her merely the trade name of an overcoat and topcoat manufactured by a certain manufacturer (R. 923); that she was not familiar with the term vicuna and had never seen or heard of vicuna cloth of any kind in six years of consumer work (R. 924); that she would naturally expect an overcoat and topcoat to differ in construction (R. 926); and would not be surprised if the overcoat had a cotton back and the topcoat did not (R. 926); that a manufacturer has a perfect right to use his trade name on an overcoat and topcoat, or on anything else he happened to make (R. 924); that it is a common custom for a manufacturer to put out the same articles under different trade names (R. 929); that the "una" on alpacuna is like the "ena" on wheatena (R. 950).

Witness Louis S. Potsdamer, Director of Gimbel's Bureau of Standards, has been associated with textiles for sixteen years. He testified the name alpacuna meant to him merely a quality coat manufactured by Siegel Company (R. 997); that the slogan "There is only one alpacuna overcoat" [fol. 697] merely means that there is only one overcoat that can have the name alpacuna (R. 997); it does not mean at all that the same overcoat cannot have some other name such as "Alperu"; that there is nothing unusual about that (R. 998). Vicuna he knows is the name of an animal.

but has never seen a piece of cloth made of the animal's fibre. It is also used to represent a finish, but he is not familiar with that either (R. 998). He would not expect overcoat and topcoat sold under same name to have same fibre content. It is customary for the owner of a trade name to sell more than one type of garment under the same name, and Mr. Siegel, if he put out a raincoat or a sweater might well apply the name *alpacuna* to them as well as to his coat line (R. 999, 1000); *Alpacuna* is a name used to identify Siegel products, just like Society Brand identifies Alfred Decker & Co. products, and Fashion Park identifies the Company which makes this line (R. 1031, 1035-1039) (Respondent's Exhibits 45, 46 and 47). This is illustrated by Respondent's Exhibit 47, which is an advertisement of a clothing house and which reads in part as follows: "Also suits and overcoats tailored by Hart, Schaffner & Marx, G. G. G. Clipper Craft, Crofton and *Alpacuna*".

Witness Sol Weinberg, President of Industrial By-Products and Research Corporation, and specialist in textiles, who has done work for the Commission, testified *Alpacuna* signified to him merely a trade name (R. 1055); that it is common to apply a house name to a whole line of garments (R. 1057); that *vicuna* means an animal (R. 1058) and also means a soft finish fabric without definite definition of fibre content (R. 1059). That the overcoat fabric is in no sense an adulterated fabric. An adulterated fabric consists of a fabric in which wool, hair and cotton are mixed in a hopper to produce a contaminated yarn from which coating material is made. The overcoating fabric sold by respondent under its name *Alpacuna* is not made in this way at all. It is composed of two separate yarns, one of them [fol. 698] 100% virgin wool, mohair and alpaca, and the other 100% cotton which is used as a backer for a definite purpose (R. 1254, 1255).

Witness Charles Weinstein, Vice President of C. I. O. and Manager of the Philadelphia Branch of the Amalgamated Clothing Workers of America, testified he knew the *Alpacuna* overcoat and members of his Union worked on it. The name *Alpacuna* signified to him merely a name for an overcoat, just like the name Chevrolet, Chrysler, Buick or Society Brand (R. 1220-1223). *Alpacuna* certainly never indicated to him there was any vicuna fibre in the coat; it is a familiar practice for a manufacturer

to sell his coats under different names, and this is necessary in order to get volume production (R. 1225, 1226).

Witness Phyllis Rubin testified she was employed by Gimbel Brothers in the Bureau of Merchandise Information; that the name Alpacuna was to her merely a trade name (R. 1090, 1091). She has never heard of the word vicuna, save that she looked it up in the dictionary and found that it was a rare animal and the finish of a cloth (R. 1091, 1092). There are a lot of trade names ending in "una" or "cuna" and to her they are just euphonious names (R. 1094, 1095). It is common practice for manufacturers to sell the same article under different names (R. 1095). She has seen the name Alpacuna used just like the name Fashion Park, to describe a line of merchandise (R. 1120) (Respondent's Exhibit 54).

Witness Muriel Brown testified she was employed by the Philadelphia Record as a professional shopper; the name Alpacuna is a trade name (R. 1125); it is a usual practice to use a trade name for different articles (R. 1126); it is a usual practice to sell the same article under different trade names (R. 1127).

10. That the Trial Examiner failed to report that Sylvan S. Stroock, who is the leading importer and manufacturer of vicuna cloth made out of the animal fibre, sees no objection whatsoever to the use by respondent of the word Alpacuna, and so advised counsel for the Commission (R. 1264, 1265) (Respondent's Exhibit 63).

11. That the Trial Examiner failed to report that no objection was made to the use of the name Alpacuna in the original complaint.

12. That the Trial Examiner failed to report that respondent in this case signed a stipulation prepared by William Chantland, Esq., counsel for the Commission, settling the case (Respondent's Exhibits 55, 56); that said counsel advised that it was proper to use advertisements stressing the wearing qualities of the coat which did not specify the content, and that where content was mentioned in the advertisement it was essential to include the entire content; that since the stipulation respondent has sought to comply with it and with the directions of counsel for the Commission, and has issued only advertisements in accordance with the advice received (R. 1193, 1195).

13. That the Trial Examiner failed to report that prior to any investigation by the Federal Trade Commission the Respondent issued advertising which featured the cotton back on the overcoat, and has continued to do so (R. 1194, 1195).

14. That the Trial Examiner failed to report that vicuna cloth made of the vicuna animal fibre, while luxurious does not wear well (R. 810) and does not dye well (R. 412) and is non-commercial.

15. That the Trial Examiner failed to report that the overcoat fabric was specially designed with a cotton back to give strength and a nice finish, and to give warmth without undue weight (R. 16, R. 872, 873); that it is an excellent product which has stood up favorably under rigid [fol. 700] tests (R. 1232 and Exhibits B-1—4 of original answer).

16. That the Trial Examiner failed to report that the complaint herein should be dismissed.

Jacob Siegel Company, by (S.) Robert T. McCracken,
Attorney for Respondent.

Dated: April 21, 1941.

Before Federal Trade Commission

EXCEPTIONS OF COMMISSION'S ATTORNEY TO TRIAL EXAMINER'S REPORT

Comes now George W. Williams, attorney for Federal Trade Commission in this proceeding, and excepts to the Trial Examiner's Report Upon the Evidence herein filed April 12, 1941, and states his exceptions thereto as follows:

I

Exception is taken to the failure of the Trial Examiner in his report, on page 6 under the heading "Dealer Advertisements" to include references to the dealer advertisements, such as was made in connection with respondent's advertising copy at the bottom of page 5, namely, advertisements featuring Alpaca without qualification, or disclosure of the composition of the fabric.

[fol. 701]

II

Exception is taken to the failure of the Trial Examiner to include in his report, under the heading "The Issues", page 8, an issue as to whether or not respondent placed in the hands of retailers means whereby said retailers could mislead and deceive a substantial portion of the purchasing public. This issue could be numbered 6.

III

Exception is taken to the failure of the Trial Examiner in his report, on page 14, immediately before the paragraph beginning with the words and figures "Respondent's Exhibit 42 is a piece of cloth", etc., to include the statement that in many of the publications there is a pictorial representation of the Vicuna animal as well as the others herein involved (R. pp. 720 et seq. & 747).

IV

Exception is taken to the failure of the Trial Examiner in his report, on page 29, to state at the end of the penultimate paragraph that the witness testified that there actually is such a thing as an *all wool carpet*, that is to say, carpets composed *entirely* of wool (R. p. 1236):

Q. "Is there such a thing as an all-wool carpet?"

A. "Oh, yes, absolutely."

Respectfully submitted, George W. Williams, Trial Attorney.

April 19, 1941.
GWW:ir.



No. 2407

In the United States Circuit Court of Appeals
for the Third Circuit

October Term, 1943

JAMES S. GILBERT, PETITIONER

VERSUS
FEDERAL BUREAU OF INVESTIGATION, RESPONDENT

AFFIDAVIT OF PETITIONER'S BRIEF

OF PETITIONER'S RIGHT TO A HEARING IN THE FEDERAL TRIAL
COURT

W. H. GILBERT,

Chief Counsel,

GEORGE W. WILLIAMS,

Special Attorney,

Attorneys for the Respondent,

Washington, D. C.

INDEX OF WITNESSES

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MILLARD D. BROWN—DIRECT EXAMINATION
JACOB SIEGEL—DIRECT EXAMINATION

MILLARD D. BROWN, witness for the Commission.

DIRECT EXAMINATION

[14] By Mr. WILLIAMS:

Q. You are generally familiar with the manufacturing trade, I assume?

A. Fairly so.

Q. And you know of manufacturers, of course, whose coats are all wool when they are represented to be all wool, don't you?

[15] A. Oh, yes.

Q. There are plenty of them?

A. Yes.

Q. And they are wool coats when they represent them to be wool?

A. That is right.

Q. Could you name some?

A. Well, I think that is generally the case among most manufacturers. I think the manufacturers as a rule are a pretty honest sort of a crowd. I don't think they misrepresent.

Q. You think it is a general understanding that when they represent it as wool it is wool?

A. Yes.

JACOB SIEGEL, witness for the Commission.

DIRECT EXAMINATION

[42] The WITNESS. We have an advertising man. He gets up this mat.

[43] By Mr. WILLIAMS:

Q. Didn't you give Mr. Stroock a newspaper mat?

A. It must have been a copy of this.

Q. I have indicated on there "Mr. Stroock 8/16/39."

A. Yes.

Q. You recognize that mat, don't you?

A. Yes; I recognize that.

Mr. WILLIAMS. Now, would you please identify this mat?

[44] Trial Examiner REARDON. Take this paper, Mr. Reporter, and mark it for identification as "Commission's Exhibit 1-A, B," and so forth, until you finish.

(The newspaper mat referred to was marked "Commission's Exhibit 1-A to 1-J," inclusive, for identification.)

By Mr. WILLIAMS:

Q. Now, Mr. Siegel, this newspaper mat that I hand you, marked "Commission's Exhibit 1-A to 1-J" for identification, is what you gave to Mr. Stroock to bring to me.

A. Yes.

Q. In Washington?

A. Mr. Stroock delivered it.

Trial Examiner REARDON. The whole thing is referred to as a mat; m-a-t?

Mr. WILLIAMS. That is what they call a newspaper mat.

Trial Examiner REARDON. I thought what they used in an advertisement is a map; m-a-p.

Off the record.

(Discussion off the record.)

By Mr. WILLIAMS: [45]

Q. These various exhibits are attached to an outside cover entitled "Newspaper Mat Service, Jacob Siegel Company, Philadelphia," and has on it in pencil by myself "Stroock, 8/16 39." Now, you supplied these papers, these exhibits, to Mr. Stroock to bring to me?

A. Yes, sir.

Q. And they represent, as I understand, what was then the current advertising?

A. Yes.

Q. That is, later. Of course, that advertising comes out for the coming year.

A. Yes.

Mr. APPEL: For the present year.

By Mr. WILLIAMS:

Q. For the present year 1939?

A. This is 1938.

Q. Now, you speak of there being only one Alperu coat in the advertisement, ad number 101. What is the Alperu coat like?

A. It is a different name.

Q. But what is the coat like?

A. The coat is the same fabric, the same construction, under a different name. We can say there is only one Alperu registered name. There is so many imitations, Judge.

Q. Yes.

[46] A. That is why we mention there is only one.

Q. Well, there are actually two coats of the same fabric construction, yet you give the two different coats different names. Why do you call one Alperu and one Alpacuna?

A. Because we started with Alpacuna. We started with that name. There is only one. And then there are certain merchants who say, "We will maintain the same price. Give us no name at all, or our own name, and we will sell it."

Q. Is this correct, that in smaller cities that only one concern handles your coat—

A. What?

Q. Is this correct, that in smaller cities one concern handles your coat, but in larger cities your coat is sold by several different concerns, and each concern uses a different name?

A. Two names.

Q. You only have the two names?

A. We have different names.

Q. I ask you what other names do you give your coat that you call Alpacuna.

A. So far as I know, these two names, but we are thinking of adopting another name.

Q. Don't you have as many as three stores in a large city that sell your coat?

A. We have a dozen in New York, or 15.

[47] Q. What names do they use?

A. Some with a label and some without a label, and some use their own name.

Q. Some sell it with their own name?

A. Yes.

Q. What name do you supply besides Alpacuna and Alperu?

A. Right now——

(Addressing Mr. Appel:) Do we have another name?

Mr. APPEL. Andesian.

The WITNESS. Andesian.

Mr. McCracken. What is that name?

The WITNESS. Andesian.

Mr. McCracken. How do you spell it?

Mr. APPEL. A-n-d-e-s-i-a-n.

By Mr. WILLIAMS:

Q. And then you say in addition to these three names, when your coat is sold in a number of stores in large cities such as New York, many times the storekeeper will give any name to the coat that he chooses?

A. No. When we sell with the label "Alpacuna"——

Q. I did not ask you that. I asked you if a storekeeper selling your coat gives it another name than the name you give it.

A. In Philadelphia——

Q. New York, I said.

[48] A. A few stores sell them under their own name.

Q. What name do they use?

A. Their personal name.

Q. Name some of them.

A. Witty Brothers, in New York.

Q. What other names?

A. This is about the only house that gets them.

Q. You said there are about a dozen stores that sell this coat in New York. Then, all the others sell them under one of these three names.

A. Yes; Alperu, Alpacuna, and Andesia.

Q. So there are some cases in some cities where two stores sell them under the same name?

A. Yes.

Q. Under the same name?

A. Yes; in New York.

Q. Now, where else do you have stores that sell your coats under their own names?

Mr. WILLIAMS. Could I ask Mr. Appel?

Trial Examiner REARDON. Off the record.

(Discussion off the record.)

By Mr. WILLIAMS:

Q. When you refer here in the same advertisement, ad number 101, to the Alpacuna coat being warmer in a certain percentage, and being lighter, and wearing longer, and so on, you [49] also say that there are more than eight other all-wool overcoats.

A. Yes.

Q. Then, doesn't that clearly indicate that this is an all-wool coat, when you say "eight other all-wool coats"?

A. Well, we compare them as to wear and warmth and feel, but not the contents.

Q. Well, doesn't that imply clearly that this is an all-wool overcoat?

A. There was no other Alpacuna coat in the market.

Q. Well, isn't that a clear implication that the Alpacuna is an all-wool overcoat?

A. Well, there was no other coat similar to this that we can take and test and compare them as to wear and durability and weight.

Q. Isn't that language there pretty clear, from the English standpoint, when you refer to eight other all-wool coats?

Mr. McCRACKEN. Of course, I have not objected, but it is very argumentative.

Mr. WILLIAMS. I am asking him for an interpretation of his own language.

The WITNESS. Technically I don't know. All I am interested in is the coat. We were the first ones to introduce Alpacuna, and the term is acceptable to the public.

By Mr. WILLIAMS: [50]

Q. You have a trade-mark that you claim is registered.

A. Yes.

Q. And that trade-mark appears in Exhibit 1-D, ad number 103, does it not?

A. Yes.

Q. As part of the advertisement of Jordan Marsh Company, Boston?

A. Yes.

Q. And what does that trade-mark consist of?

A. This trade-mark [indicating]?

Q. Yes.

A. Just an animal, scenery, mountains, a circle around it.

Q. In other words, it is a concentric circle?

A. Yes.

Q. With the word "Alpacuna"—

A. Yes.

Q. On top, and the word "fabric" underneath?

A. Yes.

Q. With an animal and something that indicates mountains?

A. Yes.

Q. What animal is that?

A. I don't know, myself. There is no animal like this.

Q. There is no animal like this?

A. This is just a matter of drawing. We tell the artist to draw an animal. I haven't seen a live animal like that [51] myself.

Trial Examiner REARDON. Off the record.

(Discussion off the record.)

Trial Examiner REARDON. The ad will speak for itself. I think we can have it interpreted by the Commission, rather than have him state what his interpretation is.

Mr. McCracken. I would think so.

The Witness. It looks like an Alpaca to me. I haven't seen an Alpaca either.

By Mr. WILLIAMS:

Q. Do those mats that have been furnished by you, or advertisements, appear in the newspapers? Are they published

by the retailers or others to whom you furnish the mats? Have such advertisements appeared in the papers?

The WITNESS. I believe some did. I couldn't tell you. Our advertising manager takes care of that.

Trial Examiner REARDON. Off the record.

(Discussion off the record.)

Trial Examiner REARDON. On the record [52].

The WITNESS. Yes; they have appeared; that is right.

Trial Examiner REARDON. In newspapers?

The WITNESS. Yes.

By Mr. WILLIAMS:

Q. Now, I notice that you—

Trial Examiner REARDON. Do you wish to offer those? They are qualified for admission.

Mr. WILLIAMS. I will offer them in evidence.

Trial Examiner REARDON. Commission's Exhibit 1-A to 1-J is offered in evidence. Is there any objection?

Mr. McCracken. No objection; no.

Trial Examiner REARDON. The same may be received and marked in evidence as "Commission's Exhibit 1-A to 1-J," inclusive.

(The mats referred to, heretofore marked for identification "Commission's Exhibit 1-A to 1-J," inclusive, were received in evidence.)

By Mr. WILLIAMS:

Q. I notice in some of those ads—

Trial Examiner REARDON. Mark it "Commission's Exhibit 2" for identification.

(The paper referred to was marked "Commission's Exhibit 2" for identification.)

By Mr. WILLIAMS: [53]

Q. I am handing you now one of several sheets supplied by your office to the Federal Trade Commission.

Trial Examiner REARDON. Suggested advertisements supplied to the dealers.

By Mr. WILLIAMS:

Q. (Continuing.) Which were supplied to the Federal Trade Commission representative, and I am calling your attention

to ad number 103, The Union, Columbus—The Union being the name of the store, Columbus, Ohio.

A. Yes.

[55] By Mr. WILLIAMS:

Q. Mr. Siegel, these advertisements all went out in the press in accordance with the set-up of this mat service, did they not?

A. Yes; by Mr. Appel. He writes all ads.

Q. The answer is "yes"?

A. Yes.

By Mr. WILLIAMS:

Q. So you have nothing further to show that you know the [56] contents of the fabric in so far as this advertising goes?

A. Yes.

Q. And that you personally never made any attempt to get a correct analysis before you allowed these ads to go out?

A. No.

Trial Examiner REARDON. Commission's Exhibit 2 for identification may be marked in evidence as "Commission's Exhibit 2."

(The paper referred to, heretofore marked for identification "Commission's Exhibit 2," was received in evidence.)

By Mr. WILLIAMS:

Q. Now, as I understand it, the papers that I am now handing you—I will ask them to be identified in a minute—

Trial Examiner REARDON. Well, before you ask any questions, Mr. Williams, suppose you have it marked.

Mr. WILLIAMS. Make it three, then.

Trial Examiner REARDON. So that any question and answer will be connected.

Mr. WILLIAMS. That will be three. We will offer [57] the whole thing.

Trial Examiner REARDON. That will be marked "Commission's Exhibit 3-A to 3-D." Are they bound firmly together?

Mr. WILLIAMS. Yes.

Trial Examiner REARDON. Mark it "Commission's Exhibit 3-A to 3-D," inclusive, for identification.

(The papers referred to were marked "Commission's Exhibit 3-A to 3-D" for identification.)

Mr. WILLIAMS. Now, as I understand it, I will have to give them a little more description than is in the record now.

This mat service is alleged as the preceding one to the one that was introduced as Commission's Exhibit 1-A to 1-J.

By Mr. WILLIAMS:

Q. I notice at the head of this very large page advertisement, Maurice L. Rothschild, ad number 100, what appears to be someone of the family of four animals which we have heretofore mentioned proceeding toward a high mountain, and at the head of that I notice the following words: "Alpacuna is woven from the hair of the Alpaca, which lives in the Andes Mountains, where the temperature is apt to change in [58] a single day from 100 degrees at noon to freezing at night." Was that coat at that time woven entirely from the Alpaca?

Mr. McCracken. Objected to. The statement does not say that it was woven entirely. It says it was woven from the hair of the Alpaca. I object to the insertion of the word "entirely" in the question.

By Mr. WILLIAMS:

Q. Having in mind the fiber content of this Alpacuna coat, what explanation have you as to that headline?

By Mr. WILLIAMS:

Q. In view of the fact that—well, just answer that [59] other question.

A. What question?

Q. Well, I asked you in view of the fact that this fabric is composed as heretofore testified, how do you explain the headline of this ad that I have just described as being 101 on the last mat service introduced?

A. I have no explanation to make.

Q. You have no explanation to make?

A. I don't write the ads.

Q. However, these ads were published in accordance with this mat service, were they not?

Trial Examiner REARDON. In referring to "these ads," you mean Commission's Exhibit 3-A to 3-D?

Mr. WILLIAMS. And particularly ad No. 101 in that.

Trial Examiner REARDON. 101?

Mr. WILLIAMS. That is the ad, 101, 3-C.

Trial Examiner REARDON. Well, refer to it as 3-C, then.

Mr. WILLIAMS. Yes. I am referring to the Rothschild ad.

By Mr. WILLIAMS:

Q. Have you any further statement to make about that headline?

A. No.

Q. I ask you, what explanation have you to make about this [60] string of animals, which are obviously wool-bearing animals and presumably from South America? Any further explanation?

A. No explanation.

Q. Aren't they obviously wool-bearing animals and apparently inhabiting a high altitude?

A. Yes.

Q. They are?

A. They look to be.

Q. They look to be, you say.

A. I don't know.

Q. And, of course, the same applies to these various other ads of like character. Now, Mr. Siegel, these same types of advertisements that we have just looked over have been used all throughout the country where you sell your coats, have they not?

A. Judge Williams, I just said a while ago that these are only mats that we send them. I couldn't say whether they use the advertisement. It is perfectly true what you said.

Q. I am asking you to answer the question as to whether or not these various sheets in these various mats resulted in advertisements in connection therewith.

Trial Examiner REARDON. You mean Commission's Exhibit 3-A to 3-D.

Mr. WILLIAMS. Yes.

By Mr. WILLIAMS: [61]

Q. Answer the question.

A. Yes; they were intended to be used.

Q. Were they or not used as advertisements?

A. I am sure some of them were used, but I don't know whether all were used.

Q. Well, will you consult with the official who handles that matter, and I want you to answer the question directly one way or the other. [The witness consults with Mr. Appel.]

A. They were used.

[62] Q. Mr. Siegel, I assume in the various cities indicated on the advertisements?

A. Yes.

Trial Examiner REARDON. They have been published in those cities?

The WITNESS. Yes.

Trial Examiner REARDON. I refer to Commission's Exhibits 1-A to 1-J, Commission's Exhibit 2, and Commission's Exhibits 3-A to 3-D, inclusive, representing advertisements. [Pause.]

By Mr. WILLIAMS:

Q. Now, Mr. Siegel, in connection with your overcoats, you have labels, do you not, put on the coats?

A. Yes.

Q. What do those labels contain?

A. Alpacuna fabric.

Q. What else?

A. Warmer, lighter in weight—lighter and warmer.

Q. Do they have your trade-mark on them?

A. Yes.

Q. And what does the trade-mark consist of? [63]

A. Just a double line circle with an animal in the center.

Q. And what legend in connection with that?

A. In the back of—

Q. Is there anything in that circle?

A. Yes; an animal, and the background is sort of scenery; mountains.

Q. Mountains?

A. Yes.

Q. And what words appear there?

A. It says warmth, wear and lighter weight, Alpacuna fabric.

Trial Examiner REARDON. Is that a copy of the trade-mark that you are looking at now?

The WITNESS. Yes.

Trial Examiner REARDON. That appears on the label?

The WITNESS. That appears on the label.

Trial Examiner REARDON. Complete?

The WITNESS. Complete; yes.

Trial Examiner REARDON. The witness points to the label on Commission's Exhibit 1-G, Mr. Williams. [Pause.]

By Mr. WILLIAMS:

Q. Well, at the same time you supply some metal along with the coat, don't you?

A. Yes. [64]

Q. And what is that?

A. A copy of the label; trade-mark.

Q. Well, have you one of those?

A. There is some photographs in the advertising.

Trial Examiner REARDON. Would that be a photograph of it, Mr. Siegel [indicating]?

The WITNESS. It is supposed to be a reproduction of it. Each coat bears a metal; a coin.

By Mr. WILLIAMS:

Q. Well, you do furnish advertising of some types, do you not, containing other lettering than appears on this one we have just marked?

Trial Examiner REARDON. 1-G.

Mr. WILLIAMS. Yes.

A. "Alpacuna, only one."

Q. "Alpacuna, only one."

Mr. WILLIAMS. As Mr. Siegel does not seem to be entirely conversant with the advertising features, and indicates that he would rather have Mr. Appel answer for him, if it would be satisfactory to respondent's counsel, I will discontinue examining

him at this point and will take Mr. Appel to speak for him on this subject.

Mr. McCracken. All right.

[65] Mr. WILLIAMS. I may say, Mr. McCracken, that I also have a number of swatchbooks, things like that, and I will take it up with him if he wants to, or I will take it up with Mr. Appel.

[66] Trial Examiner REARDON. Mark "Exhibit 3-A to 3-D" in evidence.

(The papers referred to, heretofore marked for identification Commission's Exhibits 3-A to 3-D," inclusive, was received in evidence.)

By Mr. WILLIAMS:

Q. In your answer you supply an advertisement which seems to analyze the fiber content and the elements which go to make up your fiber. Do you have any other types of advertising?

Trial Examiner REARDON. The advertisement you just referred to, Mr. Williams, is what?

Mr. WILLIAMS. It is in the answer. It is filed as an exhibit.

By Mr. WILLIAMS:

Q. In connection with your answer, you filed what purports to be one of those mat services with your name attached at the bottom, and this exhibit is marked "Exhibit C" in connection with the respondent's answer, and purports to give the general make-up of the fabric involved. Is all the advertising correct there? Do you prefer that question to go over to Mr. Appel?

A. I would prefer that; yes.

Q. Mr. Siegel, you are pretty generally acquainted with [67] the overcoat business, I suppose. You have been restricted to that particular field, have you not?

A. Yes.

Q. You know, surely, some manufacturers and also stores which sell, manufacture and sell, wool coats besides yourself, of course.

A. Oh, a number of them.

Q. And you also know manufacturers and retailers who, when they purport to sell a wool coat, sell a wool coat, don't you?

A. I don't know their business.

Q. Sir?

A. I don't know the retail business, but I know some of my competitors' method of doing business, but I don't know the retailers' method of doing business. They have all kinds of products.

Q. You do know that some of the retailers do sell wool coats when they purport to sell wool coats, don't you?

A. Well, the customers I sell—I don't think anyone misrepresents or sells anything but a good wool coat.

Q. I am asking you whether or not you know whether there are manufacturers who sell and deliver a wool coat when they purport to do so.

A. I think most of them do.

Q. Most of the manufacturers do?

[68] A. Yes.

Q. Taking the various fibers involved in your fabric as a basis for consideration, the Vicuna of the fiber would be the most valuable, would it not?

A. According to the statement here, I suppose it would.

Q. And the Alpaca next, I believe?

A. I don't know the price of the wool.

Q. I am talking about the way they are considered in your trade.

A. Yes; right now, since I saw advertised coats for \$900.

Q. Well, you understand that the Vicuna, then, would be what we might call the first quality, or the first in service?

A. Yes.

Q. And the Alpaca would be next?

A. I suppose so.

Q. And certainly Alpaca and Vicuna would be a preferable combination to ordinary wool, would it not?

A. I don't know how the Vicuna and Alpaca mix would look like. I mean as far as the fabric itself. I am not a manufacturer of woollens.

Q. At any rate, the two fibers are considered tops in your particular line?

A. Well, from what I hear, Vicuna is more expensive.

Q. And a Vicuna and Alpaca combination of that kind would [69] be more expensive than just ordinary wool?

A. I suppose so. There is all kinds of grades of wool, too.

Q. In some of your advertising, which I will put in in connection with Mr. Appel's testimony, but, in order to save time here, you refer to this as there being only one Alpacuna overcoat.

A. Yes.

Q. I don't know whether I asked you about that or not?

A. Yes; you did.

Q. Well, in view of the fact that there are other coats, such as Alperu, made of the same fabric, how can you say that there is only one Alpacuna overcoat?

A. Because the coat when we first introduced it was Alpacuna, and that was a matter of advertising promotion.

Q. I understand that, but how can you say there is only one Alpacuna, when Alperu is made of exactly the same fiber?

A. That is the trade name. "there is only one Alpacuna coat."

Q. If I were to buy one of your coats and go to a friend of mine and say, "I have got the only one coat. The Alpacuna coat is the only one of its kind," that would not be true, would it?

A. As a matter of advertising, there is only one coat.

Q. There is only one coat?

[70] A. Yes.

Q. Doesn't that mean that there is only one coat of this kind?

A. No. It is just the trade-mark. There is just the—

Trial Examiner REARDON. Just a moment. Don't argue any more.

The WITNESS. We make hundreds of thousands of coats. It couldn't be one coat.

By Mr. WILLIAMS:

Q. Doesn't the label indicate that it is the only genuine Alpacuna coat?

A. That is correct.

Q. And by that you don't mean that there are other coats with exactly the same fiber bearing other names?

A. Exactly.

Q. You don't mean that is the only coat made of that fabric?

A. Because that is the original trade-mark. There is too many substitutes.

Trial Examiner REARDON. You have gone into that

By Mr. WILLIAMS:

Q. Then there is another ad that says—I believe you will recognize this—

Trial Examiner REARDON. You are referring now to what ad?

[71] Mr. WILLIAMS. A label, I mean.

By Mr. WILLIAMS:

Q. It says that this label identifies all overcoats made of genuine Alpaca.

A. Alpacuna.

Q. Alpacuna? I beg your pardon.

A. Yes.

Q. Then, do I understand that there are a number of concerns that make the same fabric; the same type of fabric?

A. Yes; a number of them.

Q. What difference would there be in the contents of those? Do you know?

A. I haven't tested their fabrics, but they look like ours. Most of them are inferior and sell for less money.

Q. I think you have had some of your coats returned from time to time. Why were they returned?

A. Sometimes abusing them in wear. We guarantee every coat as to wear. Some fellows may drive trucks and wear it out in a year; some, three or four years, if they don't abuse it. We take back for poor wear.

Trial Examiner REARDON. I don't see that that has any bearing.

By Mr. WILLIAMS:

Q. What percentage of them come back because of the fact that they are not all wool content?

[72] A. We never had any complaint since we manufactured that coat as to content or fabric.

Mr. WILLIAMS. Well, I think, subject to possibly recalling him, the witness is with you.

[123] BERNARD J. APPEL, witness for the Commission.

DIRECT EXAMINATION

Q. Can you identify this, in newspaper mat service, that has been offered as Commission's Exhibits 1-A to 1-J, and which has marked on the top of it "Strup S 16 39"?

A. I identify it as our newspaper mat service for the year 1938.

[124] Q. And that is the one immediately preceding the current set of advertising?

A. Yes.

Q. And here are several more sheets that have been put in, one as Commission's Exhibit 2, and the next one put in as Commission's Exhibits 3-A to 3-D, both inclusive [showing exhibits to the witness].

A. I identify these as our newspaper mat service for the year 1936, but with the reservation that may be 1937. I am more inclined to think they are 1936.

Q. Well, it was understood they were turned over to us in 1938. Would you have in your files back advertising?

A. Oh, yes; we have on file there back advertising.

Q. In other words, the 1937 did not change materially from that?

A. Oh, yes; 1937 is different.

Q. In a material sense?

A. In a great many ways; yes.

Q. At any rate, you say this is not back of 1936?

A. Yes; I would say it was back of 1936.

Q. Back of?

A. No; not back of 1936.

Q. Do you have the 1937 mat here, Mr. Appel?

A. Well, I don't see it, unless you show it to me. This is

[125] 1938 [indicating]. I don't see 1937.

Q. Was there any material change from 1937 in 1938?

A. In many ways; yes. For instance, as I wrote these ads myself, I can tell you some of the changes.

Q. Yes.

A. For instance, following this service we discontinued the use of this mountain [indicating].

Q. The pictorial scene?

A. Yes.

[126] Q. But you intended all those ads to be put into use?

A. Generally speaking; yes.

The WITNESS. Generally speaking, these ads were used. Now, specifically, that is something else again.

By Mr. WILLIAMS:

Q. But all those ads were used somewhere?

A. I would say so.

Q. And in a good many places? Some of them in a good many places?

[127] A. Yes. Some ads are more favored.

Trial Examiner REARDON. The question is, were all those ads used?

The WITNESS. Yes.

By Mr. WILLIAMS:

Q. What explanation can be made of the matter at the head of Commission's Exhibit 3-C, and also the pictorial scene there of the procession of animals towards a mountain?

A. Well, I can perhaps straighten the Commission's thoughts out on this by explaining that ad.

It seems to me, Mr. Williams, that the testimony I heard here this morning, there was a lot of cross-purposes here, if you don't mind my saying so, because I am more familiar with it perhaps than anyone else.

You must keep in mind this is an entirely new and novel idea. This was something that was never done before in the history of the textile industry.

Q. This is 1936 [indicating].

A. So much the better. 1936 or 1938, it makes no difference what year. The only way I can explain that to you is to take you back as quickly as I can and paint you a picture of how these ads came into being.

Q. Well, here is one expression here: "The Alpacuna is woven from the hair of the Alpaca, which lives in the Andes Mountains, where the temperature is apt to change in a single [128] day from 100 degrees at noon to below freezing at night," accompanied by this pictorial scene, with two thermometers, one on either side, and with a procession of animals of the type that we have mentioned here towards a mountain.

A. I can explain that very clearly, if you permit me to go ahead and give you the background for that ad.

I want to bring to your attention again that this Alpacuna coat—or, rather, this Alpacuna fabric is entirely a new and novel idea. Nothing like that before 1931 or 1932 was ever produced in the history of the textile industry.

Q. Not even in Europe?

A. Not even in Europe; not in the world.

Q. I thought I heard—excuse me.

A. Pile fabric had been produced in Europe, but not Alpacuna. You see, there has been no change in the art of overcoat fabrics since the recording of history, and up until 1931 or 1930 there never had been produced a fabric of this nature in the entire world. It was new. It was novel. It was original.

In the past 10 years—or rather, the 10 years previous to our engaging in this—

Mr. WILLIAMS. Of course, if your Honor please, I do not at all object as far as I am individually concerned, but I do not think it is material to this question.

The WITNESS. Well, I can't explain that ad unless you permit me to go ahead. Mr. Williams, there is a reason [129] for that ad. There must have been a reason for it.

Mr. WILLIAMS. Oh, doubtless.

The WITNESS. They didn't pick it out of the air.

Mr. WILLIAMS. And that applies to the word, of course, too.

The WITNESS. Well, that is something else again. We won't go into that.

Mr. WILLIAMS. Well, we will probably get around to it sooner by letting you go ahead.

The WITNESS. Up until 1931 or 1932 all overcoats sold and made in America and throughout the world were of the same type of overcoat fabrics that had been made ever since fabrics had been made. There had been no change in the art of making fabrics for a good many hundreds of years. Up until 1931 and 1932 most of the advertising in connection with the manufacture of overcoats stressed to the consuming public that it would wear very well and that it weighed so many ounces. All the overcoat fabrics were something like 32, 34, 36 ounces to the yard, which was very burdensome.

Now, about 1931, 1932, the picture started to change. Transportation had changed the mode of living—man's mode of living, especially during winter seasons, when closed cars were introduced, and heated cars were introduced, and men started to find out that weight did not make for warmth; that weight was burdensome and heavy and wore them out and did not [130] give them the warmth they could get for the weight they would carry around, with the result that the entire textile industry suffered. There was less overcoating.

Mr. WILLIAMS. Well—

The WITNESS. This is interesting. You should listen to it. And this is pertinent to this whole proposition, so the Commission has the background.

Mr. WILLIAMS. It is all right with me. I am interested in hearing what you say, but I doubt if it is material to this question.

The WITNESS. It is material.

Trial Examiner REARDON. Just a minute. Go back to the question and just repeat that question. (The question was read as follows:

“Q. What explanation can be made of the matter at the head of Commission's Exhibit 3-C, and also the pictorial scene there of the procession of animals towards a mountain?”)

The WITNESS. I will answer it.

Our Alpacuna does have the hair of the Alpaca in it, a large quantity of Alpaca. The Alpaca does come from the Andes Mountains, where the temperature does change in a single day

from 100 degrees at noon to below freezing at night. There is no doubt that these animals have the kind of a fleece [131] that they do have to endure these changes in temperature. That is right out of the book.

By Mr. WILLIAMS:

Q. How about this first phrase here, "Alpacuna is woven from the hair of the Alpaca"?

A. There is Alpaca woven into the Alpacuna.

Q. That does not say that. It says the Alpaca is woven from that fiber.

A. This was fiber 6 years ago, or four or five years ago.

Q. You said at the very earliest 1936, and you think it is possibly 1937.

A. No. 1936—written in 1935 or early 1936 for publication.

Q. And possibly 1937?

A. All right.

Q. But here is what I am asking you: What I am asking you is, how could you make a phrase of that kind when the coat was not woven from Alpaca, but was woven from Alpaca, mohair, another kind of wool, and made up partly of cotton?

A. Well, the "partly of cotton" we don't consider. The trade considers that the cotton in this coat is a component part of the garment itself. It is just like the lining. That is my interpretation.

Q. The fact is, however, that you used that phrase, and I am asking you why. Why did you mention only one fiber of the Alpacuna rather than the various fiber contents?

[132] A. Because we were not under the necessity, or we did not think we were under the necessity, or never thought of any other fiber content.

Q. It does not mention weight or anything else.

A. By weight I think mohair and Alpaca is the same thing, according to the natural history books.

Q. Well, at any rate, there is nothing in there to indicate at all that that contained any other fiber than Alpaca.

A. No, it does not, but—

Q. And there is nothing anywhere else in your advertising to indicate that.

A. No. But I will show you other advertising that will show you.

Q. And here is also an ad of the 1938 variety. Exhibit 1—B, which has your trade-mark on it, which has within the two concentric circles what I call a sort of a picture of an animal. What animal is that?

A. Well, as a matter of fact, Mr. Williams, that is not any animal I know of. It only has three legs, in the first place.

Q. Well, what is it supposed to represent?

A. I don't know what it is supposed to represent.

Q. It is not supposed to represent one of the four animals that we have referred to a while ago?

A. It could be considered an Alpaca. The Lord knows it don't look like one.

[133] Q. Anyhow, it is a depiction of a wool-bearing animal; is that right?

A. No question about it.

Q. And is there anything else in that ad to indicate that there is anything other than Alpaca in that material, or in that overcoat?

A. No, there is not. This ad does not state in any way, shape, or form, what the fiber content is in this coat.

[137] Q. I ask you whether or not there is anything on your coats that would indicate the fiber content.

A. Not on the coats themselves, but in advertising we do.

Q. Do you mean all your advertising or some of your advertising?

A. Half of our advertising is set up to tell the content of the coat; the other half is set up to not tell the content of the coat. It is up to the retailer, because he is spending his own money advertising the coat, not ours, to choose which advertising he wants to use. He elects his own advertising. He picks his own advertising. We give him a choice of both kinds, the same as in this [indicating].

Q. Yes; I understand. You follow up your advertising pretty closely, don't you?

A. Yes; I do.

Q. Well, could you tell me what concerns last year used that?

A. Offhand, Mr. Williams, I couldn't tell you. In that sense I don't check what kind of advertising the customer uses.

Q. The reason I ask you is that I have a file here with a large number of newspaper advertisements of Alpacuna, practically [138] all of which eliminate any explanatory statements; in fact, I don't see any.

A. How about the year 1938?

Q. Ranging from 1934.

A. Do they include 1938?

Trial Examiner REARDON. Of course, you are not testifying, are you, Mr. Williams? You do not want this in the record.

Mr. WILLIAMS. Yes; I do.

By Mr. WILLIAMS:

Q. In all of the advertising matter I don't find a graphic description of the coats.

A. You want to go to 1937. This book was issued for 1938.

Q. Well, I will ask you to run over that period of years, and I will ask that that file, which is clipped together, go into evidence.

A. Is that up to 1937?

Q. Yes.

A. I will say none of that advertising that you are asking for appeared, because we did not issue that mat service book until 1938.

Q. Well, I would like to—

A. In 1937 there was none.

Q. No graphic description?

A. No.

[139] Q. And when you analyzed—

A. It was in February 1938. I first analyzed it in February of 1938, because this was a new and novel thing. We had to get to understand this thing ourselves, without any past experience to guide us in the advertising, because nothing like this had ever happened in the world before.

[141] Mr. WILLIAMS. Suppose we say that the file I now have in my hand, enclosing these exhibits, the title seems to be this: "Samples of newspaper advertising between the years 1934 and 1937, inclusive, prepared by customers," and in order [142] to facilitate the hearing, these various newspaper clippings will begin after the last exhibit is marked during the hearing today.

Trial Examiner REARDON. Will be marked for identification as Commission's exhibits.

Mr. WILLIAMS. But considered in the record as of the present moment.

Trial Examiner REARDON. What difference does it make as of what moment they are in?

(The documents referred to were marked for identification "Commission's Exhibits 7 to 37," both inclusive.)

By Mr. WILLIAMS:

Q. Is this a sample book [showing a book to the witness]?

A. Yes.

Q. What does it represent?

A. The fall of 1934, it is marked.

Q. Is there anything in there to indicate the fiber content of these various samples?

Mr. WILLIAMS. Suppose you identify this.

Trial Examiner REARDON. The book, together with the swatches and advertising material—how many pages?

Mr. WILLIAMS. Seven pages.

Trial Examiner REARDON. Book with seven pages containing swatches and advertising matter, will be marked for [143] identification as "Commission's Exhibit 4."

(The swatchbook referred to was marked for identification "Commission's Exhibit 4.")

By Mr. WILLIAMS:

Q. I ask if there is anything in those advertisements, or anything in that book at all to indicate what the fiber composition is.

A. No; there is not. That goes to the retailer, not the consumer.

Q. I hand you another book, so-called, and ask you what that is.

A. That is the Alpacuna overcoat and topcoat swatchbook, year 1938.

Mr. WILLIAMS. I would like to have that marked for identification.

Trial Examiner REARDON. The so-called Alpacuna swatchbook, together with advertising matter, 1938, may be marked "Commission's Exhibit 5," for identification.

(The Alpacuna swatchbook above referred to was marked for identification "Commission's Exhibit 5.")

By Mr. WILLIAMS:

Q. Now, that swatchbook, like the other book, was put out by your company?

A. It was.

Q. In 1938?

[144] A. 1938.

Q. Is there anything in there to indicate the fiber content of the garment?

A. No, sir. But that book is meant for the retail trade, not for the consumer.

Q. All right. I offer you another what appears to be a swatchbook, and ask you to state what it is.

A. It is a swatchbook; fall of 1937.

Q. There is something in there to indicate the fiber content, isn't there?

A. Yes; right here [indicating].

Q. The back end indicates fiber content there. And that also was put out by your company?

A. It was, for the retail trade only; not for the consumer.

Q. That is right. And the impress on the two front covers also were put on by your company?

A. Correct.

Q. Indicating—

A. Indicating the Alpacuna coin that goes on every Alpacuna coat.

Q. I see.

Mr. WILLIAMS. That should be marked for identification. [145] (The Swatchbook, for 1937, referred to, was marked for identification "Commision's Exhibit 6.")

By Mr. WILLIAMS:

Q. Do you happen to have one of those metals that you attach to your coats?

A. No, I don't, Mr. Williams, but I can very easily get you one; but it is nothing different from what we have already spoken of in the record. It just says: "One Alpacuna coat."

Q. In other words, it is the same as the imprint on the two swatchbooks?

A. That is right.

Q. Only smaller?

A. That is right. They are attached to each coat.

By Mr. WILLIAMS:

Q. I think I recollect you having said that when you put these advertisements out your customers decide as to how much they should follow those advertisements.

A. That is right.

Q. You supply them and they do as they please.

A. That is right.

Q. So the mere fact that you put out an advertisement with all the explanatory matter that you have seen on some of the advertisements would not at all indicate that that had been [146] published that way?

A. That is right.

Q. And the fact is they are not always published that way?

A. In most cases they are not, Mr. Williams.

Q. In most cases they are not published that way, with that explanation?

A. No. Most retail stores, department stores, will not use the manufacturer's advertising. They want their own particular style. They have their own particular —

Q. Set-up?

A. Set-up. Their own style, they call it. Like Wanamaker's differs from Strawbridge & Clothier. Every particular store has its own particular style.

Q. From your knowledge, however, they do not use as a rule this type of an advertisement?

A. Less of it is used than more.

Q. And that, you say, has only been used since about 1938?

A. This book here.

Q. Yes.

A. This particular book with the cotton-back description.

Q. And it was not used back of 1938?

A. It was not used back of 1938.

Q. I think you find in your answer on page 5 that you state that the cotton is plainly visible from an examination of the material.

(Last question read.)

[147] A. The cotton back is plainly visible from an examination.

By Mr. WILLIAMS:

Q. In the overcoat?

A. Yes, it is.

Q. With the lining there?

A. No. You have got to take the lining off.

Q. Therefore, I gather from your answer that it is invisible to anybody buying the coat?

A. Well, if you want to examine it, Judge—

Q. You would have to tear the lining out?

A. You would have to open it just a little bit.

Q. But it is not visible from an ordinary examination?

A. No.

Q. I mean a customary examination.

A. No, it is not. It all depends on what you call an examination.

Q. Then at page 6 it is not masked in any way.

A. Well, it is not masked, Judge. If anybody wants to go into it—it is all according to what you call an examination. If anybody wants to find out what the back of the Alpacuna [148] coat consists of, all you have to do is open up an inch of the lining.

Q. The fact is that a person looking at the coat in an ordinary way would not come in contact with the cotton back?

A. Not unless they want to find out.

Q. By opening up the lining?

A. That is right.

Q. All right. That is all there is to it.

By Mr. WILLIAMS:

Q. It is stated in your answer also that you have no accurate knowledge of the competitors' practice in connection with marking their coats, but you do know as a matter of fact that the general run of manufacturers do not misrepresent the material from which their coats are made, don't you?

A. Well, generally speaking, no merchant, legitimate merchant, misrepresents their merchandise.

Q. Exactly so. And, therefore, most of them do not misrepresent?

A. They certainly do not.

[149] Q. And that applies to retailers?

A. Certainly. The bulk of the merchants of America are honest.

Q. Then, also, in the answer you say the advertisements fairly depict the contents of the fabrics.

A. They certainly do, for the very simple reason that the cotton backing has nothing to do with the warmth, wear, or wearing qualities of the Alpacuna fabric. The cotton backing is only a foundation of what is on the front.

[150] By Mr. WILLIAMS:

Q. How can you say, Mr. Appel, that Commission's Exhibit 1-B fairly depicts the contents of that coat?

A. Because the advertisement 1-B does not disclose in any way—make any statement as to the contents of the coat—of the fabric. No attempt was made to describe the content of the fabric.

Q. There is some place in the answer that the representation fairly depicts the fabric.

A. Unfairly depicts?

Q. No; fairly depicts the fabric.

Trial Examiner REARDON. Well, what is the question. You have made a statement and he has not denied it.

By Mr. WILLIAMS:

Q. Now, that is set forth in the complaint.

A. Yes, sir; we still claim that to be true.

Q. What about the Guanaco and the Turkistan Angora?

A. Well, Turkistan Angora—the word “Turkistan” is a little poetic license.

[151] Q. And there is no evidence of any Guanaco.

A. Well, Guanaco, according to the history books, and according to the books written on the subject by authorities, tell me, and I will tell you the same thing, that Guanaco is identically the same as Alpaca with the exception that the Guanaco is wild and the Alpaca is domesticated.

Q. They are given in the book different names and therefore known as different animals.

A. They qualify the names by telling you that they are the same identical animal.

Trial Examiner REARDON. This is a discussion that is going on, Mr. Williams.

Mr. WILLIAMS. I am asking questions.

By Mr. WILLIAMS:

Q. Then, that is the sense in which you use it?

A. Yes.

Q. It also mentions that the Guanaco and the Alpaca are two separate fiber animals.

A. Yes; but at the same time they say that the Guanaco and the Alpaca are the same animal.

Q. How can you refer to four wools?

A. Poetic license.

Q. Poetic license only?

A. Poetic license only, but the facts are true.

Q. Well, only as to names. [152] Now, you advertise also that these coats are the finest, that they are warmer and lighter in weight. You advertise that way, don't you?

A. Yes, we do.

Q. Are they any warmer or finer or what not than the Alperu?

A. No; they are equal to the Alperu.

Q. The same thing?

A. Same identical thing.

Mr. WEINROTT. They are different trade names.

By Mr. WILLIAMS:

Q. Then, that particular coat is not any finer than the other, which the stores down here sell as Alperu?

Trial Examiner REARDON. Mr. Williams, he has testified that Alpacuna and Alperu are the same fabric.

Mr. WILLIAMS. I am asking how he can advertise the same fabric combination with two different names.

By Mr. WILLIAMS:

Q. You also advertise that the Alperu is the finest, too?

A. No, we do not.

Q. You do not advertise that the Alperu is the finest?

A. No. We issue no advertising of any kind for Alperu in the same manner as we issue for Alpacuna.

Q. But one would gather from reading the advertisements which set out that the Alpacuna is the finest; that the Alperu is not.

[153] **Trial Examiner REARDON.** Now, I will sustain an objection to that, because that is merely argument.

Mr. McCRACKEN. I was just about to say that.

Trial Examiner REARDON. The facts are in evidence.

Mr. McCRACKEN. There is a mountain just east of Tacoma sometimes called East Tacoma and sometimes called Mt. Rainer. It would be perfectly true to say "Mt. Rainer" was the highest mountain in the State of Washington, and it would be the same as saying "Mt. Tacoma."

By Mr. WILLIAMS:

Q. What other concerns make the coats from the same fabric construction?

A. There is no other concern that makes a coat of the Continental Fabric, which is our Alpacuna fabric. And in our opinion, and the trade's opinion, there is no fabric that equals the Continental fabric, which is our Alpacuna, in quality.

Q. But of the same construction?

A. The other fabrics are imitations.

[154] **By Mr. WILLIAMS:**

Q. Well, in how many cities do you have duplications of stores that sell coats made from Alpacuna fabric?

[155] **A.** You mean where we have one store that sells Alperu, for instance?

Q. How many cities have more than one store?

A. I will say 50 cities.

Mr. McCracken. More than one store that sells Alpacuna overcoats?

The WITNESS. Yes.

By Mr. WILLIAMS:

Q. And they range about how many stores?

A. Well, in the City of Chicago, New York, Detroit, they may run, ten, fifteen, twenty. In smaller communities there may be two.

Q. So, in New York, where they have ten, what stores use their own names?

A. You mean as to their own names or the names supplied by us?

Q. Their own names, other than "Alpacuna" and "Alperu."

A. I will have to consult our records. I would say, New York City, McCreery uses "Alperu." I know the larger accounts, but I will have to look up the smaller. We have, twelve, fourteen hundred customers.

Trial Examiner REARDON. Some of them selling the same fabric under a different brand?

The WITNESS. Yes. They have their own private brands. And some don't label at all. It is the store's [156] privilege, naturally.

By Mr. WILLIAMS:

Q. Then, invariably, that is the type of coat that has the suffix "cuna"?

A. No, it does not; because we don't want to imitate our own coat. We have hundreds of imitations now.

Q. No. I say the same coat advertised under a different name that did not have "cuna" in it at all.

A. No, it does not. We don't want to confuse our own trade name with others similar to it.

Q. So, therefore, the suffix in the word "Alpacuna," "cuna," is not invariably used in connection with all coats made of that fabric?

A. No. There are hundreds of names in America beginning with "cuna" or ending with "cuna" in connection with the sale of overcoats.

Q. But the overcoats don't compare with—

A. With our "Alpacuna"?

Q. Yes.

A. No.

Mr. WILLIAMS. I think that is all. The witness is with you.

GEORGE W. CONNOR, witness for the Commission.

DIRECT EXAMINATION

[162] By Mr. WILLIAMS:

[164] Q. Have you recently had any occasion to discuss the Alpacuna coat with anybody?

A. I did; with a man that contacted me and asked me something about it. At the time I couldn't give him any information about it. He was under the impression that I could, being in the Better Business Bureau, that I may have had such contact with it. He intended buying an overcoat for the winter season of this year, and I was wearing a light coat, and he wanted to know if this was a combination topcoat and overcoat, whether it would answer the purpose for an overcoat and yet be light enough to wear as a topcoat. I couldn't answer his question, because I didn't know.

Q. Was there any discussion as to the fiber content?

A. Yes. He brought that out. Evidently he had read some of the advertising or had received some information from sales [165] persons in the stores.

Q. What was the fiber content, according to his understanding? The party is not available today.

Mr. McCRACKEN. That is hearsay.

Mr. WILLIAMS. Suppose we let it go in for the moment subject to correction.

Trial Examiner REARDON. Just a moment. What is the question?

(Last question read.)

Trial Examiner REARDON. Do you object to that?

Mr. McCracken. Yes.

Trial Examiner REARDON. I shall sustain the objection.

By Mr. WILLIAMS:

Q. Was there anything from that conversation which would lead you to believe that the coat was made from Alpaca and Vicuna?

Mr. McCracken. I object to that. It is the same question.

Trial Examiner REARDON. Same ruling.

Mr. WILLIAMS. Exception as to both of them.

By Mr. WILLIAMS:

Q. Suppose you look at No. 204 of 3-D and see what impression you gather from that as to the fiber content.

A. I guess my answer would be very similar to my answer in regard to the other thing: That I would think the fiber [166] content was a combination of the wool of these two animals.

Q. In other words, if you were going to a store to buy that coat tomorrow, you would go with the impression that that contained the fiber of those two animals?

A. Yes.

Q. Excepting what you heard today.

A. Yes; disregarding that.

Mr. WILLIAMS. That is all.

Mr. McCracken. I move to strike out that part of the witness' testimony which purports to be an interpretation of the advertisement.

Trial Examiner REARDON. Motion is granted. Exception to Commission's Counsel.

[179] By Mr. WILLIAMS:

Mr. WILLIAMS. I ask that this batch of newspaper clippings in the way of advertisements which have been marked for identification "Commission's Exhibits 7 to 37, both inclusive," be received in evidence.

Trial Examiner REARDON. Is there any objection?

Mr. McCracken. There is no objection except for this:

There has been no identification of the activity of the Respondent with those advertisements; in other words, we raised no question, sir, when the mat which was supplied by the Respondent was introduced because we were responsible for that, but which of these advertisements was prepared by [180] the stores, the retailers, we do not know; and therefore, while I have no objection to the advertisements being introduced as advertisements of this garment, I do object to their being introduced as binding the respondent in every statement therein.

Trial Examiner REARDON. I will overrule the objection and admit them in evidence as Commission's Exhibits 7 to 37, inclusive. Exception is given to the respondent.

(The newspaper clippings referred to, heretofore marked for identification "Commission's Exhibits 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37," were received in evidence.)

Mr. WILLIAMS. I understood that on Friday, October 27, 1939, you supplied these to the Commission.

Mr. McCracken. We supplied mats.

Mr. WILLIAMS. No; I mean Commission's Exhibits 7 to 37, inclusive.

Mr. McCracken. That is right; we supplied them to the Commission.

Mr. WILLIAMS. As having been prepared by customers or at least put in by customers.

Mr. McCracken. Yes; by customers.

Mr. WILLIAMS. I also have here another batch [181] of advertisements of the same kind, and the label reads: "Sample of newspaper advertising between the years 1934 and 1937, inclusive, prepared by Jacob Siegel Company and used by its customers."

Trial Examiner REARDON. Mats, I understand, were supplied by the respondent to its customers, who in turn prepared these advertisements.

Mr. McCracken. Yes, sir. The judge has it right. Whether or not the customers followed the mats in every respect we do not know and cannot control.

Trial Examiner REARDON. That is sufficient on the record.

Mr. WILLIAMS. It is also true you supplied these advertisements.

Mr. McCracken. Supplied mats from which those advertisements—supplied the clippings now in your hands to the Commission.

Mr. WILLIAMS. Which have been just described, have just heretofore been read.

Trial Examiner REARDON. The advertisements offered may be marked in evidence as Commission's Exhibits 38 to 75, inclusive.

Exception to the respondent.

Mr. WILLIAMS. They did not make any exception.

Trial Examiner REARDON. They made an exception.

[182] Mr. McCracken. We made the exception which was stated.

Trial Examiner REARDON. They object that they are bound by them unless they are copies of the mats.

The clippings referred to offered and received are marked in evidence as "Commission's Exhibits 38 to 75, inclusive."

(The newspaper clippings referred to were marked "Commission's Exhibits 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75" and received in evidence.)

EPHRAIM FREEDMAN, WITNESS FOR THE COMMISSION.

DIRECT EXAMINATION

[182] By Mr. WILLIAMS:

[183] Q. As the name implies, your business is to see that the materials that go through your store are as represented; in other words, that their true content is known by the store and is passed on to the customers; that is correct, is it not?

A. That is right.

Trial Examiner REARDON. They are as represented in advertisements, you mean?

Mr. WILLIAMS. And otherwise.

The WITNESS. As represented in advertisements and otherwise.

[186] Q. Would you gather from that advertisement there was any cotton in that coat?

A. No.

Q. Would you understand there was no cotton in it from the description and what not there?

A. Yes.

Q. I hand you Commission's Exhibit No. 36 and ask you to scan it and see what understanding you would gather from it as to the fiber content of the overcoats advertised as Alpacuma?

Trial Examiner REARDON. Is there any difference in the representations there?

Mr. WILLIAMS. There is a slight difference, Commission's Exhibit 36 is a Metropolitan ad.

[187] Trial Examiner REARDON. Do you recognize any difference, Mr. Freedman, between that ad which is Commission's Exhibit 36 and Commission's Exhibit 30, regarding which you have already testified?

The WITNESS. I do, sir.

Trial Examiner REARDON. State what it is.

The WITNESS. Commission's Exhibit No. 36 does not bear the facsimile of a label that appears in Commission's Exhibit 30, and that facsimile has the picture of an animal on it.

Trial Examiner REARDON. Would your testimony, then, with respect to Commission's Exhibit 36, be the same as it is with respect to Commission's Exhibit 30 in other respects as to the fabric representation?

The WITNESS. It would have the same effect.

Trial Examiner REARDON. All right.

By Mr. WILLIAMS:

Q. Suppose you were handed a sample book such as this which is marked "Commission's Exhibit 5" for identification.

Mr. WILLIAMS. I ask that this exhibit which has been identified as Commission's Exhibit No. 5 be received in evidence if your Honor please.

Trial Examiner REARDON. Is there any objection?

Mr. McCracken. I have no objection.

Trial Examiner REARDON. Commission's Exhibit 5 [188] for identification may be marked and received in evidence as "Commission's Exhibit No. 5."

(The sample book referred to, heretofore marked for identification "Commission's Exhibit 5," was received in evidence.)

Mr. WILLIAMS. At the same time I will offer in evidence Commission's Exhibit 4 for identification.

Trial Examiner REARDON. Commission's Exhibit 4 for identification may be marked and received in evidence as "Commission's Exhibit 4."

(The swatchbook referred to, heretofore marked for identification "Commission's Exhibit 4," was received in evidence.)

Mr. WILLIAMS. Similarly, I offer in evidence Commission's Exhibit 6 for identification.

Trial Examiner REARDON. Commission's Exhibit 6 for identification will be marked and received in evidence as "Commission's Exhibit 6."

(The swatchbook referred to, heretofore marked for identification "Commission's Exhibit 6," was received in evidence.)

By Mr. WILLIAMS:

[189] Q. You say that you test out the fabrics from which coats are made or test these various commodities that go through your store. Can you say whether or not there are people who manufacture overcoats that represent them to be wool either by expressly saying so or by implication from names and they are wool when they are so represented?

A. We frequently find that coats represented to us as wool, upon examination, are found to be composed of wool.

Q. There are manufacturers who supply you with wool overcoats. Can they represent them in any way to be wool coats?

A. That is right.

Trial Examiner REARDON. Do you have in mind any particular manufacturers or where they live or do business?

The WITNESS. No, because I am not particularly interested in the manufacturers who produce the merchandise but rather in the merchandise, itself, and that which is said about it.

By Mr. WILLIAMS:

Q. If it comes to you, it comes from a factory representing it to be wool, and you find out it is wool?

A. It comes from the buyer frequently, with the name of the stores affixed, with his request for tests.

Trial Examiner REARDON. Do you buy from any such manufacturers who reside outside of New York State?

The WITNESS. Macy's buys from manufacturers outside of New York State.

Trial Examiner REARDON. Overcoats and topcoats.

[190] The WITNESS. Yes.

By Mr. WILLIAMS:

Q. Wool coats, wholly wool coats?

A. Yes.

Trial Examiner REARDON. They are delivered from outside of the state to you?

The WITNESS. Yes.

By Mr. WILLIAMS:

Q. I might ask you an obvious question: Are you a potential customer for this particular overcoat?

Trial Examiner REARDON. Have you ever sold an Alpaca coat?

The WITNESS. I do not believe we have sold any Alpaca Overcoats.

By Mr. WILLIAMS:

Q. You are in the market for overcoats like everybody else.

A. Every now and then.

Q. Even though you are with Macy's, would you be a potential customer for this coat or any other overcoat on the outside?

A. It looks good enough.

Q. That is what I mean; even though you are with Macy, you are still a potential customer for this coat?

A. That is right.

* * * *

[192] CROSS-EXAMINATION

[197] By Mr. McCracken:

Q. It makes a good overcoat, as a matter of fact?

Mr. WILLIAMS. We object to that as being immaterial.

Trial Examiner REARDON. Objection overruled.

Cross-examination by Mr. McCracken:

[198] Q. Which cotton-backed overcoat do you sell at Macy's?

A. I do not know who the manufacturer of it is.

Q. What is it called?

A. I do not think it is labeled.

Q. It has not got a trade name?

A. No; I do not think so; I may be mistaken, but I do not think so.

Q. Do you advertise it at all?

A. If we advertise a coat of that type we advertise it as a cotton-backed overcoat, or words to that effect.

Redirect examination by Mr. Williams:

Q. I might ask you, before you saw the release of the Federal Trade Commission, as I understand you to say, you thought that that garment contained alpaca and vicuña?

Mr. McCracken. He did not say that.

Mr. WILLIAMS. I thought you had, Mr. Freedman.

[199] Mr. WILLIAMS. I would like to press that question if you don't mind stepping back to the stand, Mr. Freedman.

I understand that the witness had said, at least it was to be gathered from his testimony up to the time that he saw the release of the Federal Trade Commission, in this case he had read the advertisements and that he gathered from those advertisements that there were vicuña and alpaca in those coats; is that correct?

The WITNESS. That is correct.

Mr. McCracken. Now, you gathered those two fibers were in the coat?

EPHRAIM FREEDMAN—REDIRECT EXAMINATION
 FREDERICK SCHMERTZ—DIRECT EXAMINATION
 HENRY J. HEIMS—DIRECT EXAMINATION

The WITNESS. That is right.

Mr. McCracken. That is all you know about the coats?

The WITNESS. That is right.

FREDERICK SCHMERTZ, witness for the Commission.

DIRECT EXAMINATION [200]

By Mr. WILLIAMS:

[202] Q. Take a look at Commission's Exhibit 36 and see what impression you gather from that?

A. I would say what I stated before would be equally [203] adaptable to this particular ad:

Alpacuna conveyed to me here was a product carrying alpaca and vicuna.

Q. You would not have any question about that in your mind at all?

A. I would say not.

Q. Does your store sell overcoats in other states than in this community?

A. I believe so. We do an interstate as well as intrastate business.

Q. That applies to overcoats as well as other things?

A. Yes, sir.

Q. When you advertise or otherwise represent, either by express name or by trade names or other means, that overcoats are wool, are they wool coats?

A. Wanamaker's advertisements are true representations of the fiber content of coats.

HENRY J. HEIMS, witness for the Commission.

DIRECT EXAMINATION [206]

By Mr. WILLIAMS:

[207] Q. In what way?

A. I have heard of it through advertising and through seeing the lines of some of the stores I have been going through.

Q. I might ask you just what your connection is with that company?

A. I do the buying.

Q. You do the buying. How long have you been engaged in such office?

A. Twenty years.

[208] Q. I hand you Commission's Exhibit 30 and ask you to examine it and to state what impression, if any, you gather from it as to the fiber content of the overcoat advertised therein?

A. It has the same content.

Q. You sell overcoats I assume; men's overcoats?

A. Yes, sir.

Q. Do you have a source of supply outside of the State of New York as well as inside of it?

A. Yes; we ship outside of New York.

[209] Q. I mean a source of supply.

A. We buy outside of New York.

Q. And you also ship outside of New York?

A. We also ship outside of New York.

Q. As the buyer, do you know of any manufacturers who supply you with wool overcoats representing them to be wool, either by express statements or by use of words indicating that, when they are wholly wool coats?

A. We do not think of buying anything that is cotton; nothing but all wool; they must be all wool.

Q. Do all these factories outside of the state that supply you with coats, overcoats, supply wool overcoats?

A. Only wool.

Q. And they represent them to be wool overcoats?

A. Yes.

[210] Q. Will you examine this swatch and advertisement book marked "Commission's Exhibit No. 5," and the cover and the insides, and state what you gather from that book as to the fiber content of the articles advertised. I think there is a topcoat there.

A. I happen to know what this coat is made of, so I do not think it would be fair for me to talk on this point.

By Mr. WILLIAMS:

Q. You are familiar with the construction of the coat?

A. Yes.

Q. Are you familiar with the Alpacuna topcoat?

A. It is the same kind of a coat.

[211] Q. You think it is the same kind?

A. Yes.

Q. The two coats have the same fabric construction?

A. Yes, sir.

Q. If I were to state to you that the topcoat is made of alpaca, mohair, and sheep's wool and no cotton backing, would that be surprising to you?

A. That would.

Q. When you saw a topcoat and an overcoat advertised in the same name, what would you expect to find as to their respective fiber content and construction?

Trial Examiner REARDON. What do you mean, the same name?

Mr. WILLIAMS. They both mean Alpacuna, advertised or labeled as such.

The WITNESS. Professionally, you mean? I know what the contents of the coat are.

By Mr. WILLIAMS:

Q. What would you expect to find?

A. Me, personally? Me, personally, or a customer—what do you mean?

Q. I mean, what would you, yourself, expect to find?

A. I know what it is. I would know as soon as I saw it that it is cotton-backed.

Q. And you know that applies to the topcoat?

[212] A. I would surmise it is the same.

Q. How about a customer—are you able to tell what a customer would understand, after all these years of experience?

A. I cannot tell what a customer would consider it as.

Q. On the other hand, if you were acquainted with a topcoat which was exposed on both sides, the outside and the inside, so that you could tell from looking at it—without destroying any part of it—you could tell from that coat it was all wool, and then you were to buy an Alpacuna coat, a coat of the same name, which was an overcoat, what would you expect the fiber content and construction to be?

A. If the name was on both coats?

Q. The same name as that?

A. I would expect to find the same thing in both coats.

* * * * *

REDIRECT EXAMINATION

[215] By Mr. WILLIAMS:

Q. Mr. Heims, when the word "fleece" is used, what understanding do you gather from that?

A. Fleece can be used as camel fleece or wool fleece.

Q. Does that mean a wool?

A. Yes; fleece means wool.

Q. In other words, I gather in a common parlance that would be synonymous with wool fleece?

A. Fleece; yes.

Mr. McCRACKEN. Does your store sell any of the Valcuna products in any line?

The WITNESS. I do not think so; I am not sure.

Mr. McCRACKEN. Does Valcuna have vicuna in it?

The WITNESS. I am not sure whether they sell the products.

Mr. McCRACKEN. All right; thank you.

* * * * *

By Mr. WILLIAMS:

[216] Q. After examining that identified paper marked "Respondent's Exhibit No. 1," you think you would gather from the word "Ancuna" there was Vicuna in the coat?

A. That would be my understanding of it.

Q. What would be in it is another question?

A. Yes.

* * * * *

44 MRS. FREDERICK L. WAREHAM—DIRECT EXAMINATION

Mrs. FREDERICK L. WAREHAM, witness for the Commission.
[218]

Direct examination by Mr. WILLIAMS:

[219] Trial Examiner REARDON. You are a housewife?

The WITNESS. Yes; I buy the things that these gentlemen advertise.

[220] Q. Do you have any club relationships particularly?

A. Yes.

Q. With what ones are you connected?

A. I belong to the Women's Home Makers Forum. I belong to the Forum. I belong to the Club for the Aged Relief. I belong to Priors.

Q. What is the nature of the two first ones you named?

A. The Home Makers Forum; in the Home Makers Forum we are interested in everything that concerns the consumer in any way, either in the home or out of the home—that is, anything that pertains to the homemaker, that means purchasing all kinds of objects.

[221] Q. What effort is made to disseminate knowledge of this type, generally?

A. A great effort. If there is anything that is under suspicion in the way of fiber; for if there is incorrect labeling or anything of that kind in anything the women really purchase, we try our very best to find out exactly what we can get to the best of our advantage for our dollar.

Q. Have you noticed a wider acquaintanceship on the part of the consumer public with the basic elements of garments? And the contents, and that sort of thing?

A. There has been an effort made to designate on the garments what the fiber content is and let the consumer then judge whether he wants to buy it or not.

Q. I gather from what you say there is a greater enlightenment now amongst the public than formerly?

A. There certainly is.

Q. In what way is that enlightenment spread besides through your agency?

A. In whatever departments—for instance, in canned goods?

H. J. KENNER—DIRECT EXAMINATION

Q. I mean what agencies are employed, to your knowledge, and what means of disseminating knowledge among people?

A. We have been asking the stores to test the various articles and to label them, especially the label.

Q. What I meant was to inform the individuals themselves, the public, the individual public.

[222] A. Oh, well—

Q. Do you have lectures, or anything of that sort?

A. Especially in the Home Makers group, we are asking people to come and lecture to us and tell us just what to look for and what to expect. We are getting that from the labels.

Q. What is the size of your organization?

A. This Home Makers Forum I do not think is very large, about seventy-five to eighty-five people.

Q. Do you have other people in from time to time?

A. We invite the public; anybody is welcome to come, and we have accredited speakers.

CROSS-EXAMINATION

[224] By Mr. McCracken:

Q. You have suggested or indicated this was an all-wool overcoat, though you also said you know nothing about the overcoat?

A. I am only looking at the advertisement.

H. J. KENNER, witness for the Commission.

DIRECT EXAMINATION

[228] By Mr. Williams:

[229] Q. Would you understand it to be a wholly wool coat or a partially wool coat, or what?

A. I would understand it to mean a wholly wool coat in the sense that the fiber from those animals is generally classified as wool in general terminology, such as I understand that camel's wool is called either camel's wool or camel's hair in ordinary usage.

[230] A. You say not what I would know?

Q. Not what you would know personally about that particular coat but what you would gather from that advertisement as to its contents?

A. This advertisement conveys the same impression to my mind as the other.

Trial Examiner REARDON. Meaning Commission's Exhibit No. 36.

Mr. WILLIAMS. I will ask that this newspaper clipping, which is an advertisement by Arnold Constable, be marked as "Commission's Exhibit 76" for identification.

By Mr. WILLIAMS:

Q. Mr. Kenner, do you recognize that advertisement?

A. Yes, I do.

Q. Why, particularly?

A. It is an advertisement which I clipped from the New York Sun dated October 19, 1939.

Q. You brought that here yourself?

Mr. REARDON. The newspaper clipping may be marked for identification as "Commission's Exhibit No. 76."

(The newspaper clipping referred to was marked "Commission's Exhibit 76" for identification.)

By Mr. WILLIAMS:

[231] Q. Mr. Kenner, you say you brought that in here?

A. Yes.

Q. Now will you examine that advertisement again. I presume you have already examined that advertisement—and see what there is in it to indicate the fiber of the topcoat advertised as Alpacuna?

A. The advertisement has the name Alpacuna as a headline. [232] the word "topcoat" beneath it, and in the text, beginning in the fifth line, this statement appears: "The Alpacuna truly is a masterpiece of weaving art—four famous fleeces scientifically blended to give you topcoat perfection." That is the end.

Q. What would you understand that coat to be composed of? The advertisement says "fleeces"; what do you understand that to mean, for instance?

A. "Fleece" always means to me—has always meant to me—a fleece or fleeces always meant some kind of wool.

Q. Mr. Kenner, if you had a topcoat having been purchased as a result of seeing that advertisement—and I think I may say it has no lining; that is understood from the complaint and answer; it has no lining and therefore you can examine it both inside and outside without any destruction of any part of it—and you understood that topcoat was made out of some woollens, and you were to see an advertisement of an overcoat which had a lining, and therefore the inside is entirely covered, and you bought such an overcoat in such circumstances, what would you expect to find in fabric content of that overcoat in the same name?

A. Lacking any further information, I would expect the overcoat to be all of one fabric, the same fabric, the same fabric content as indicated by the trade-mark.

[233] Q. And this also you would gather, yourself, from the examination of your topcoat?

A. Yes.

Q. Is that correct?

A. Yes, that is correct.

[240] Mr. McCracken. That is all.

Mr. Williams. I would like to offer in evidence Commission's Exhibit 76 for identification.

Mr. McCracken. No objection.

Trial Examiner REARDON. Commission's Exhibit No. 76, for identification, may be marked as "Commission's Exhibit 76 and received in evidence.

(The newspaper clipping referred to, heretofore marked for identification, "Commission's Exhibit 76," was received in evidence.)

IRENE CLYNES, witness for the Commission.

DIRECT EXAMINATION [240]

[240] By Mr. WILLIAMS:

[241] Q. What is the business of that organization?

A. To promote truth in advertising.

Q. How long have you been with that organization?

A. Eleven years.

Q. For all that time, you have been coming in contact with the matter of truth in advertising.

A. That is right.

Q. In one way or another?

A. Yes.

Q. Does that occupation bring you in contact very much [242] with advertising matter?

A. Yes; all types of advertising.

A. That is right.

Q. Of course, you naturally, yourself, aside from any assistance you give to any menfolk that buy—you buy your clothing?

A. Yes.

Q. You are pretty well familiar with fabrics?

A. Pretty well, I think; I try to be, anyhow.

[243] Q. What would you understand by fleece?

A. Wool.

Q. Wool?

A. Yes.

Q. That topcoat is not lined except maybe partially, like you see some topcoats lined?

A. Yes.

Q. And after seeing that that topcoat was composed of four wools and you saw later an advertisement of an overcoat as an Alpacuna overcoat, would you or not expect to find the same fiber content?

[244] A. Yes; I would, having seen the previous ad before.

Q. In other words, I gather that you would understand that the name would control the fabric content?

A. Yes.

Q. In all of the different types of coats?

A. Yes.

Q. In two different types of coats made from the same fabric?

A. That is right.

Q. If there is any question about that, I wish you would not hesitate to say so.

Trial Examiner REARDON. She has said so.

REDIRECT EXAMINATION

[247] By Mr. WILLIAMS:

Q. In the cross-examination you mentioned about having prepared a swatch for some exhibit; what exhibit was that?

A. A conference we had about a year or two ago, and we prepared an exhibit of the different materials.

Q. What type of conference?

A. It was a conference of Better Business Bureaus.

Q. What was that composed—who was that composed of?

A. All the members of the affiliated Better Business Bureaus; the National Association of Better Business Bureaus.

Q. Will you just state of whom that body was composed and how widespread?

Mr. McCracken. That is objected to.

Trial Examiner REARDON. I really sustain the objection to that. I must sustain the objection to it.

Mr. WILLIAMS: Do I understand that questions may not further be asked eliciting information as to the extent to which these things have come to public notice, like [248] vicuna.

Trial Examiner REARDON. This witness would not be qualified for that.

Mr. McCracken. I make the motion I have made heretofore to strike so much of the witness' testimony as consists of the interpretation of this advertisement by the witness.

IRENE CLYNES—REDIRECT EXAMINATION
MISS RUTH MARSHALL—DIRECT EXAMINATION

Trial Examiner REARDON. I will deny the motion and let it stand for what it is worth. I have indicated what it is worth. (Off the record.)

By Mr. WILLIAMS:

Q. What is the number of your membership?

Mr. McCracken. That is objected to, if your Honor please.

By Trial Examiner REARDON:

Q. Do you know what the purpose of the conference was?

A. I do not know; I believe it was a meeting of all Bureau Managers.

Q. You do not know what the purpose of it was?

A. One thing here we had an annual meeting.

Miss RUTH MARSHALL, witness for the Commission.

DIRECT EXAMINATION

[249] By Mr. WILLIAMS:

Q. How long?

A. On and off for the past twelve years.

[250] Q. What do your duties consist of?

A. Shopping of advertising and merchandise.

Q. Does that bring you in contact with advertisements a good deal?

A. Yes; very much so.

Q. Are you familiar with that coat at all?

A. No.

Q. Did you ever notice that name in the advertisements?

A. I have seen them.

Q. You have seen them?

[251] A. Yes.

Q. Did you have any impression from those advertisements before reading this one as to what that coat was composed of?

A. The same as I said before; it meant the same thing to me; it was composed of alpaca and vicuna.

Q. You would understand the two coats to be made of exactly the same things?

Trial Examiner REARDON. What two coats?

Mr. WILLIAMS. I just referred to Commission's Exhibit 36, which is an advertisement, and to Commission's Exhibit No. 76, which is also an advertisement, if your Honor please.

The WITNESS. Yes; I would understand that they [252] were both made of wool.

By Mr. WILLIAMS:

A. Yes, sir.

Q. Would you gather from Commission's Exhibit 36 there was anything else in the coat besides those two, alpaca and vicuna?

A. Nothing else is mentioned in the copy of the ad; nothing else is mentioned in the copy of the ad.

Q. What would you say that you would think that you understood from the ad the overcoat would be composed of as to fiber content?

A. Alpaca and vicuna.

Q. And the other, Commission's Exhibit No. 76?

A. That mentions four famous fleeces, which might be alpaca and vicuna plus two other fleeces, which would all make it an all-wool coat.

Q. Speaking of all-wool coats, I gather from what you say you understand alpaca and vicuna to be wools?

[253] A. Yes.

Q. Is that what you gather as a common understanding?

A. Yes.

Q. Is there any question about that in your mind?

A. Not in my mind.

Q. If you were to purchase a topcoat of that description without lining, of course, which would enable you to examine the coat inside and outside and find it had four fleeces, and then were to purchase an overcoat that had a lining completely covering the inside of the coat, and both bearing the same names, the overcoat and the topcoat, what would you expect to find as to the fiber content of the overcoat which was lined fully?

A. Having the same name?

Q. Having the same name?

A. I would expect to find an all-wool coat.

Q. With what fibers?

A. Alpaca and vicuna.

Q. Anything else, would you say? There are two others mentioned there; you do not know what they would be, but you would at least expect alpaca and vicuna in that coat?

A. Yes; I would.

Q. Would you expect to find the overcoat had a cloth backing and the topcoat did not have such?

A. Yes.

[254] Q. Would you expect to find an overcoat to have a cloth backing when the topcoat did not have such, in coats bearing the same names?

A. Bearing the same names, I should expect to find both having the same backing.

Q. Whatever that might be?

A. Whatever it might be.

Q. Does your Bureau conduct any publicity or propaganda work?

A. Yes.

CROSS-EXAMINATION

[256] By Mr. McCracken:

Q. It is stated in one advertisement there are four, and it is not stated in the other advertisement there are two?

A. No.

Q. You would conclude from reading those two advertisements that there are four fleeces, if they told the truth?

A. Yes.

Q. There is nothing to indicate to you that they do not tell the truth, is there?

A. No.

JAY GRIFFITH, witness for the Commission.

DIRECT EXAMINATION

[257] By Mr. WILLIAMS:

[258] Q. What is your particular business?

A. I am sent out to investigate advertising and merchandise, and so forth and so on.

[259] Q. Anything else?

A. That it is also all wool.

Q. Have you read the advertisement on further?

A. Yes, sir.

Q. Is there anything else that you gather from that?

A. This—that the laboratory test showed the coat to be 26.3 percent warmer, 61 percent longer wear, and one and one-half times lighter.

Q. I note another statement: It is stated it is a "Scientific blending of the fleeces from the four corners of the world." Do you see that?

A. Yes, sir.

Q. What would that indicate to you as to the number of the fiber content?

A. That there are two in it.

[260] Q. Only two?

A. It says, "scientific blending"—no; that there are four corners; there are four corners of the world.

Q. That still might be fleece, as far as that is concerned?

Trial Examiner REARDON. He is reading it, and he says there might be four.

By Mr. WILLIAMS:

Q. Whether or not those fleeces would connote two and two or one and one you could not tell, except from the wording there?

A. Yes; that is all.

Q. Examine this advertisement, which is Commission's Exhibit No. 76, and see what impression and understanding you gather from that as to the fiber content?

A. I would gather that the coat is composed of fleeces from the alpaca and the vicuna, and two others, due to the fact it says "four famous fleeces."

Q. Suppose, as a matter of fact, the topcoat is an all-wool coat—that is, assuming that alpaca and vicuna come within that classification—and is not lined, and therefore, the inside and outside are both examinable?

A. Right.

Q. Suppose it would appear both inside and outside were wool and then you had bought an overcoat advertised as Alpacuna overcoat, with a lining completely covering the [261] interior, what would you expect to find that coat to be composed of as to the construction of the fiber?

A. The same fiber or fibers contained in the topcoat, if it were advertised under the same name.

Q. Suppose you should see an advertisement, as Commission's Exhibit 36 is, without any apparent description of the content of the overcoat, but just named Alpacuna; having known the topcoat, what would you think the content of that was?

A. I would assume the garment is made from the fleeces of the alpaca and vicuna and that it is an all-wool coat.

Q. Would you understand it was of different fabric at all from the one named as a topcoat?

A. I would assume that it is made of the same materials.

Q. Would you have any question in your mind about it or not?

A. No, sir; I would not.

Q. Mr. Griffith, please state definitely if you have any question in your mind as to whether or not they are the same fabric?

A. I would have no question.

Q. Now, Mr. Griffith, did you ever have any occasion to make any inquiries of Arnold Constable as to the content of either one of these coats?

A. I did.

Q. To whom did you speak there?

[262] Trial Examiner REARDON. Referring to what, when you say "these coats"?

Mr. WILLIAMS. Which coat was it, Mr. Griffith?

Trial Examiner REARDON. Do you mean the coats, the particular coats, that are advertised in any particular advertisement?

Mr. WILLIAMS. What caused you to go to Arnold Constable? Can you tell us that, Mr. Griffith?

Trial Examiner REARDON. I understand you got that advertisement, Commission's Exhibit No. 76; was your inquiry directed to that?

The WITNESS. It was directed specifically in connection with Commission's Exhibit No. 76.

By Mr. WILLIAMS:

Q. To whom did you speak there?

A. A salesman.

Q. Do you remember his name?

A. I think it was Nowak, but I am afraid I do not remember exactly.

Q. It was not Weintraub, was it, by any chance?

A. I do not think it was Weintraub.

Mr. WILLIAMS. Here is a memorandum if you want to make time.

* * * * *

[263] By Mr. WILLIAMS:

Q. What department was he in?

A. Men's clothing, on the second floor.

Q. That was an inquiry as to the topcoat or both?

A. Both.

Q. Oh, both; I see. Now—

A. The name appears in the right-hand corner at the top of that memorandum.

Trial Examiner REARDON. Show the witness the paper to refresh his recollection.

Does that paper refresh your recollection?

The WITNESS. The initial was "M", and the name was N-o-w-a-k [spelling].

* * * * *

JAY GRIFFITH—CROSS-EXAMINATION
JAY GRIFFITH—REDIRECT EXAMINATION

CROSS-EXAMINATION

[264] By Mr. McCracken:

Q. You said, sir, that having read one of these advertisements that describes this overcoat as having been made of four fleeces, you would think it was an all-wool coat?

A. Yes, sir.

Q. Although it does not say it is all wool—it says "four fleeces"?

A. Yes, sir; I asked him what the four were.

Q. I am not talking about what you asked him. There is nothing in the advertisement that says it is an all-wool coat.

A. I would assume it is an all-wool coat.

Q. There is nothing that says so.

A. There is nothing that says it is not.

Q. There is nothing that says that it is an all-wool coat?

A. The word "wool" does not appear in here.

Q. And the word "all wool" does not appear?

A. Let me go back over this. No.

[267] Q. And yet, isn't it quite possible—don't you know as a fact—that those advertisements are correct and that the overcoat has a cotton backing and the topcoat has not; you know that as a fact, don't you, from examining the garments, and yet they are both called an Alpacuna garment; you know that don't you?

A. Yes.

Redirect Examination by Mr. Williams:

Q. Of course, Mr. Griffith, you recall that I asked you to look at certain advertisements, Commission's Exhibit No. 36, which did not have that graphical description on it?

A. No, sir; none of these had.

Q. You made the answer based on those two advertisements, Commission's Exhibit 36 and Commission's Exhibit 76.

[268] A. Certainly.

ROBERT M. CAMPBELL, witness for the Commission.

DIRECT EXAMINATION

[269] By Mr. WILLIAMS:

[270] Q. Are there a number of them?

A. Four in New York and one in Boston.

Q. You deal, among other things, in overcoats and topcoats?

A. We do.

Q. From where do you get those coats?

A. We are our own manufacturers.

Q. When they are sold, do you sell them entirely within the state or outside of the state?

A. We sell both retail and wholesale.

Q. Do you sell only inside of the State of New York?

A. Interstate and intrastate.

Q. You do an interstate as well as an intrastate business?

A. Yes.

Q. That probably is a legal conclusion; but, in other words, you ship these coats to neighboring states?

A. To practically every state in the Union.

Q. You have all-wool coats as well as other coats?

A. Nothin but one hundred per cent all wool.

Q. When you represent your overcoats to be made either of wool—to be made of wool either by express representation or by any other terminology, are they always wool?

A. Absolutely one hundred per cent.

Q. What price coats do you sell?

A. Our prices range from \$35.00 to \$325.00 in overcoats and \$45.00 to \$95.00 in suits.

[271] Q. A \$45.00 coat is a wool coat?

A. All wool.

[272] A. That has been the understanding in the trade; and whether or not the individual on the street would come to that conclusion, of course, that is a different proposition.

Q. I do not believe I asked you how long you have been with Rogers Peet Company?

A. Thirty-one years.

Q. In what capacity?

A. At the present time I am assistant merchandise manager.

Q. And you have been such how long?

A. About five years; previous to that, store manager.

Q. I show you Commission's Exhibit No. 76, an advertisement of a topcoat. Will you examine that advertisement. Now, suppose you saw that referred to as being made of four fleeces—four famous fleeces.

A. Yes.

Q. And suppose you were to see that coat, which is an unlined coat, topcoat, generally I believe unlined, or probably a few pieces on the arm or something of that sort, but generally the inside being exposed as well as the outside to your examination, and you found that to contain wool throughout and then you were to see an advertisement such [273] as I showed you before of an overcoat which was completely lined so the inside would not be examinable, and being of the same name as the topcoat, what would you conclude as the fiber content of the overcoat?

A. Inasmuch as that name was being used really to specify from what animals they came, inasmuch as they mention four in one, you would have to assume there are four in the other, four different animals; whether you assumed it or not, there is no doubt about it; one is just a different weight from the other; the contents are supposed to be the same.

Q. If a topcoat and an overcoat were given the same name, you would understand both were of the same content even though of different weights?

A. That is right.

Q. Would you expect to find any cotton in either one?

A. If it mentioned it was in one, I would expect to find it in the other.

Q. If it is not mentioned in either one?

A. Of course, unless you tested it, you would have to assume it is all wool.

Q. Would you expect to find cotton as a result of these two advertisements?

A. No; you would not expect to; no.

Q. Do you buy any coats at all ready-made?

[274] A. None at all.

Q. You manufacture all your coats?

A. All of them.

Q. Do you come much in contact with the consumer?

A. I have up to the last four or five years. When I was connected with our retail department I naturally did, which was up to five years ago.

PASCAL R. BIANCARDO, witness for the Commission.

REDIRECT EXAMINATION

[282] By Mr. WILLIAMS:

Q. Had you had any direct contact with the subject of vicuna coats?

A. With the subject, yes; it happened about a week before I received Judge Williams' letter, and an acquaintance of mine named Robert told me of a marvellous purchase; he had bought a vicuna coat—that is what he told me; I did not see it—for \$90.00, and he thought it was a remarkable bargain because, from his standpoint, they sold from two hundred dollars up. I was not familiar with the price of vicuna coats, and I did not know it was a good bargain. That was my contact with the word "vicuna" or "vicuna coats."

Mr. ROBERT MURPHY, witness for the Commission.

DIRECT EXAMINATION

[283] By Mr. WILLIAMS:

[284] Q. I see. Now if, as stated in the pleadings in this case, the topcoats are usually not lined, and the overcoats in this case are lined, if you were to see a topcoat that was composed wholly of wool and which would be exposed so that you could examine it without in any way injuring the coat such as opening the lining. In other words: You would ex-

amine that completely, and you would find that was composed wholly of wool, two or four fleeces; what would you expect to find as to the fabric content of an overcoat completely lined and therefore unexaminable from the interior viewpoint—what would you expect to find as a fiber content?

A. I would expect the fabric to contain the same fleece as the topcoat.

CROSS-EXAMINATION

[285] By Mr. WEINROTT:

Q. Now, I will ask you the same question asked the other witnesses which you heard, if you saw this ad which is marked "Commission's Exhibit 1-J." Will you read it, please. Do you see this, "Fine, Long-Staple cotton backing"?

A. Yes, sir.

Q. Now, if you saw that you would know that there was a cotton back to this overcoat, would you not?

A. Naturally.

Q. If after that you read the ad that Mr. Williams showed you with reference to the topcoat would you also think that the topcoat had a cotton back?

A. Naturally I would.

Q. You would?

A. Yes, sir.

Q. In other words, you would not read the whole ad but just take whatever you read first as the basis for forming your own opinion?

A. I would.

Q. As to what either the topcoat or the overcoat content was without reading the ad?

A. I would.

Q. Now, what grade did you go to school?

A. I have got to seventh term high school.

Q. What does that mean?

[286] A. That is one term before graduation.

KENNETH B. WILLSON, witness for the Commission.

DIRECT EXAMINATION

[290] By Mr. WILLIAMS:

[292] Q. One is a topcoat and one is an overcoat.

A. The overcoat advertisement.

Q. I suppose you suppose you would consider yourself a potential customer for either one of those coats, would you?

A. Yes, sir.

Q. You are in the market from time to time for overcoats and topcoats?

A. Yes, sir.

Q. Suppose you were to buy a topcoat which was unlined and consequently you saw the inside and the outside of it and it was composed generally of wool with wool fiber, such [293] as alpaca, vicuna, and sheep, and then later on you saw an overcoat of the same name with a full lining to it, what would you expect in the way of fabrics in that overcoat?

A. I would expect that the trade name would mean the same thing whenever it was used. If it meant one thing in a topcoat I would assume it meant the same thing in an overcoat or suit.

Q. Would you be surprised to find that there was thirty per cent cotton in the coat somewhere?

A. I certainly would.

Q. If you would see this advertisement marked "Commission's Exhibit 30" would your opinion changed at all or your understanding be changed at all as to the content of the Alpaca overcoat?

A. No, sir.

[294] A. Mr. Stroock told me his book was sent to all Public Libraries and all college libraries in the country.

Q. You say that there is advertisements in connection with vicuna?

A. Vicuna has been advertised in this city.

Q. Have you seen any recently?

A. The most recent I saw was published by Altman's in 1937, I believe.

Q. Do you make any special effort to pick up advertisements of that kind or not, or just casually?

A. We do not. I happened to clip that particular advertisement because we were having at that time an exhibit of fabrics and I wanted to use that in connection with a piece of cloth.

Cross-examination by Mr. McCracken:

[296] Q. Are you familiar with the fact that Stetson Hat Company, the John B. Stetson Company, have registered a trade-mark which I now show you?

Mr. McCracken. I will ask to have this paper marked as "Respondent's Exhibit 24" for identification.

Trial Examiner REARDON. It may be so marked.

(The paper referred to was marked "Respondent's Exhibit 24" for identification.)

[298] Q. You have examined those advertisements, testified very frankly about them, Mr. Willson; there is nothing in those advertisements which asserts that these garments are all wool or all fleece?

A. There is nothing that asserts that but I think that the public has a right to expect that when a garment usually made of wool is advertised and no disclosure is made it is not made of wool that it is wool.

[299] Q. When you say a garment usually made of wool do you mean overcoats are usually made of wool?

A. Yes, sir; or topcoats.

Q. And if a man thought well enough of the looks to insert, let us say, a silken cord for color effect in the overcoat do you think he would have to say it was wool and silk?

A. Not if it was merely for decoration.

Q. There are a great many overcoats so decorated?

A. There undoubtedly are some.

Q. Will you be good enough to look at another advertisement which has been introduced in evidence as Commission's Exhibit 1-J. Side by side you will observe the drawing to

which I call your attention. You will notice that there are two drawings and that one of them describes the backing of this garment?

Mr. WILLIAMS. Mr. McCracken, would it not be better to have the witness examine it and see what he says?

Mr. McCracken. Quite right.

[301] Q. Supposing the advertising company said they thought this made a better reading copy, would there be a real complaint about that when it is all there?

A. The Bureau would simply recommend that the cotton backing be disclosed with equal prominence.

Q. That is a recommendation. You would not contend the ad is anything but an honest advertisement, would you?

[302] The Bureaus would contend that is misleading

Q. They would contend it is misleading?

A. They contend that any advertisement that describes the fiber content of the fabric is misleading if it fails to disclose the fibers present with equal conspicuousness.

Q. Do you mean to say in the view of your Bureau that all of the types on an advertisement must be the same size or else it is a misleading advertisement?

A. Not the same size but of equal conspicuousness, it might even be more and more conspicuous.

Q. It must be of the same size, or as you use the term conspicuousness, otherwise you feel that an advertisement is deceptive if there is any difference in the character of the type?

A. We believe it has what the Commission calls the tendency and capacity to mislead.

Q. Don't you realize, you must realize that an advertisement must have a variation in its appearance or people won't read it, isn't that so?

A. Yes, sir.

Q. Do you object to the variations?

A. We do not think that is the place to make a variation in conspicuousness.

Q. Let us look at some more things in this advertisement referring to Commission's Exhibit 1-1. You would complain

[303] that the words, "Fine, Long-Staple Cotton Backing" standing to the right there is not in as heavy type as "Blended rare animal hair fibers and fine virgin wool"; would you?

A. This particular illustration is not as misleading. I would say as this one because in this particular instance —

Q. The one on the left or to the right?

A. The one on the right, the expression, "Fine, Long-Staple Cotton Backing" is set off by itself and has a lot of white space around it and therefore stands out. This other line is immediately below the illustration and it does not stand out with equal conspicuousness.

Q. The one on the right is easier to read than the heavier type describing the hair?

A. It is equally as easy to read as the words describing the hair in that illustration on the right.

Q. Having that in mind and looking at this advertisement, Commission's Exhibit 1-I, looking the whole thing over you would not say there was anything misleading about that advertisement, would you? It is a perfectly honest advertisement, is it not?

A. I could improve its accuracy and clarity by bringing [304] up the fact it has a cotton backing.

Q. It is perfectly clear that it has that in there and capitalizes that fact. Does not this advertisement capitalize the cotton backing as being the equivalent of the animal's hide?

It endeavors to portray that and if anybody reads that advertisement they will know that fact and they will see that the advertiser, the manufacturer is proud of that feature in his garment because he is capitalizing it.

A. I would not say he capitalizes that or features that.

Q. Is there anything he features more than that in that advertisement?

A. Yes; I would say he features this fact more, the fact—

Q. Calling to the attention of the reader that it is 26.3 percent warmer, one and one-half pounds lighter, and 61 percent longer wear; you say that that is more featured than the other; why, because the letters are big?

A. That is the principle reason why that is prominent, and it is also in the beginning of the ad.

Q. Those are perfectly proper things to feature, are they not, if they are true?

A. As a matter of fact that is what we had our complaint about, that particular claim.

Q. 26.3 percent warmer, one and one-half pounds lighter, [305] sixty-one percent longer wear?

A. Yes, sir.

Q. Did someone say it was not one of those three things?

A. They said warmer than what? Lighter than what? And wear longer than what?

Q. What was your answer to that?

A. The complaint on this was to the effect this claim calls the public to believe that the Alpacuna overcoat was warmer by a certain percentage, and lighter by a certain number of pounds and would give longer wear than any or all overcoats sold in competition with it because it failed to make the comparison specific.

Q. Did you take that up with the manufacturer and the advertiser?

A. We did.

Q. What did you suggest as to that?

A. We suggested that they tell what they were comparing it with.

Q. Did they do so?

A. I believe they did.

Q. I just wanted to ask you whether or not you know about the practice of the local Bureaus, perhaps you do not. You cannot tell us that when a Bureau is requested to cooperate with the Federal Trade Commission or anybody else in a hearing or proceeding such as this it has on its staff or connected [306] certain part-time workers, has it not?

A. Local Bureaus do.

Q. A number of whom appeared here yesterday and testified?

A. Yes, sir.

Q. And do you happen to know when those workers are sent out to investigate a matter of this kind what sort of instructions are given to them?

A. I cannot say of my own first-hand knowledge what the instructions are.

Q. You cannot answer?

A. I have an idea.

Q. Give us your idea if the other side does not object.
Trial Examiner REARDON. I do not believe it would be very enlightening if we could not back it up with knowledge.

Redirect examination by Mr. WILLIAMS:

Q. These two last advertisements shown to you by Mr. McCracken, Commission's Exhibit 1-I and J, have you ever [307] seen that type of advertisement before in connection with Alpacuna?

A. I do not recall reading an advertisement which gave the description of the comparison of the animal fiber on the hide and the overcoat cloth.

Q. You spoke about the four inconspicuous types having the capacity and tendency to mislead; what is that supposed to exist?

Trial Examiner REARDON. I think he has made that clear, if it is less conspicuous, it is not read, isn't that it?

The WITNESS. It is notorious, according to our experience the public is notoriously careless and inefficient in reading each and every word of an advertisement.

By Mr. WILLIAMS:

Q. What from your observation catches their eye and dominates it?

A. Headings, illustrations particularly, in many instances where the advertisement is illustrated; the illustration.

Q. You mean they would scarcely read much of the writing where it is illustrated?

A. I think it would all depend on what was advertised and who was responding to the advertisement.

Q. You mean generally speaking?

A. Generally speaking many people respond to an offer [308] without having a clear understanding of what the advertisement itself offers.

Q. What would be the general understanding from your observation?

A. The general understanding is that cotton is not as warm a fiber as wool.

Q. Where warmth was emphasized in that advertisement what would that indicate to the public?

A. It would be associated with wool.

Q. You were speaking about the requirement of disclosure of some of the fiber or materials being in those overcoats even if they were not all wool, that is a case where you just had a blanket advertisement of an overcoat?

A. We hold with the rules of the Commission on this, where the name of one fiber is disclosed and the fabric is composed of mixed fibers the names of wool should be disclosed in the order of their predominance by weight.

Q. Then the word Alpacuna is used or there is an implied use of two fibers that necessarily requires disclosure of [309] anything else other than those by some means?

A. Yes, sir.

Q. That is what you meant by that, is it not?

A. Yes, sir.

MARKHAM HARRIS, witness for the Commission.

DIRECT EXAMINATION

[315] By Mr. WILLIAMS:

[316] Q. Do they publish anything else?

A. Encyclopedia Americana of the Americana Corporation, of 2 West Forty-Fifth Street, in New York.

Q. Have you any approximate idea at least as to the number of sets of the Book of Knowledge that are now in existence that you have sold in the last ten or fifteen years?

A. In about ten years the volume of sales for the United States would be about four hundred thousand sets.

Q. How about the Encyclopedia Americana?

A. Of the Encyclopedia Americana I should say for the same period of time we have sold about fifty thousand sets.

[317] Trial Examiner REARDON. As long as he has mentioned his reference we will take judicial notice of that in briefs.

JACK FRIEDMAN, witness for the Commission

DIRECT EXAMINATION

[319] By Mr. WILLIAMS:

Q. Please state your name for the record.

A. Jack Friedman.

Q. Please give us your business connection.

A. Manager of the Rochester Clothing Company.

[320] Q. What is the business of that company?

A. Men's clothing, overcoats and topcoats.

Trial Examiner REARDON. Do you manufacture the clothing?

The WITNESS. We are manufacturers selling wholesale.

By Mr. WILLIAMS:

Q. Do you sell in states other than New York?

A. Yes, sir.

Q. Do you deliver coats to states other than New York?

A. We do.

Q. You manufacture wool overcoats, or what kind of coats if not that?

A. All wool overcoats.

Q. All wool overcoats?

A. Yes, sir.

[321] Q. When your coats are represented to be wool either by express representation or by implication giving your trade names or what not are those coats wholly wool or not?

A. We take it from the commission houses when they tell us that, the man that sells us the goods.

Q. You understand those coats are wholly wool?

A. Yes, sir.

Q. From your experience in dealing with wools they are wool?

A. Yes, sir.

Mr. WILLIAMS: The witness is with you.

Trial Examiner REARDON. Cross Examination.

Cross examination by Mr. McCracken.

Q. Did you ever hear of the alpaca overcoat?

A. Yes.

Q. Is that overcoat represented to be all wool or is it represented in the trade to have a cotton backing?

Mr. WILLIAMS. I object if your Honor please; that is not proper cross examination.

Trial Examiner REARDON. I think he has not shown any representation. You may have something that we did not put on the record about representations perhaps.

By Mr. McCracken.

Q. You do know the overcoat?

A. Yes, sir.

[322] Q. If there is —

Mr. WILLIAMS. I will object on the grounds it is not proper cross examination at all.

Trial Examiner REARDON. We will not be technical.

Mr. WILLIAMS. The Examiner said we will not be technical.

Mr. McCracken. All that this gentleman was asked was whether or not if he represented an overcoat to be all wool it was all wool and he said yes. That is all the testimony, is it not?

Trial Examiner REARDON. That is substantially what it is.

Mr. WILLIAMS. And also interstate commerce.

Trial Examiner REARDON. That is what he was called for.

Mr. McCracken. I have not the slightest doubt if this gentleman or any other person advertised his garments to be all wool it is all wool and I am not going to ask him any more questions.

* * * * *

VICTOR S. RIESENFELD, witness for the Commission

DIRECT EXAMINATION

[323] By Mr. WILLIAMS:

Q. Do you manufacture overcoats or fabric; you manufacture the overcoats, do you?

A. Yes.

Q. Do you sell those in states other than New York?

A. Yes, sir.

Q. And do you deliver them to the customers in other states than New York?

A. Yes, sir.

[324] Q. Name one state?

A. New Jersey.

Q. What is the fabric of your overcoats?

A. Our overcoats? They are an all-wool fabric with alpaca mixture, the Wintertext is an alpaca mixture.

Q. That is what you call a wool overcoat?

A. Yes.

Q. It is a wholly wool coat?

A. We haven't got anything else but wool.

Q. Alpaca is a wool?

A. Regular wool.

Q. Regular sheep?

A. Yes.

Q. Do you understand alpaca to be wool?

A. I really must confess my ignorance of what alpaca is. The common understanding is it is another type of wool.

Q. Would you advertise or in any way represent your overcoats to be wholly wool by express statement or implication?

A. In our ads we have.

Q. Are they wholly wool coats?

A. Yes, sir.

REDIRECT EXAMINATION

[326] By Mr. WILLIAMS:

Q. How about the topcoat?

A. The topcoat I am not as familiar with as I am with the overcoat. I have seen it.

Q. What is it made up of?

A. I do not know.

Q. Will you expect the overcoat and the topcoat to be of the same fabric?

A. I would think if they had the same name there would be a connection between the coat, or rather the fibers. I would assume that one was a lighterweight fabric than the other.

Q. How would you think it would be made lighter?

A. By less material and so forth.

Mr. McCracken. The topcoat is really made for covering rather than for warmth; is it not; people do not want to be too warm in a topcoat?

A. I think it has an appeal of warmth to people who want to feel warmer than they would in a suit.

[327] You might say that is a spring and fall or early summer overcoat.

I want to say one thing in connection with this: The automobile has had an effect on the topcoat business and on the overcoat business.

Mr. McCracken. I suppose more topcoats are sold

By Mr. Williams:

Q. Suppose you saw a topcoat which of course has an exposed inside as well as an outside, and then you saw an overcoat with a lining in it, both coats having the same name and apparently the same appearance on the outside; would you expect to find the same material in both?

A. I would if I did not know anything about it.

Q. You would be surprised if you did not?

A. I do not know what the consumer would expect to find. You are asking about the consumer now?

Q. Would you not be surprised if you found there was a difference in the material used?

A. I would not be surprised after I opened up the coat.

Q. I am saying without opening it, just looking at the coat.

A. Frankly, no; and this is probably an angle you did not think of: There is a factor in this lining situation, the lining

is a dress-up of a coat. We, for instance, in certain of our garments fully buy them deliberately with [328] a celanese lining in order to dress them up, in order to give them a dressy appearance. You are asking a person who had knowledge beforehand and knew they had a cotton back.

Q. You do not do that, line the coats, to conceal something?

A. No.

Q. You do that to dress it up?

A. Yes.

Q. If you show a lining in a coat it would not be to conceal something?

A. No.

Mr. McCracken. Do you think the Alpaca people do it to conceal something?

The Witness. I do not know.

MAX R. ULLMAN, witness for the Commission.

DIRECT EXAMINATION

[329] By Mr. WILLIAMS:

Q. What is your position with the company?

A. Secretary and manufacturer.

Q. What does your company manufacture?

A. Topcoats and overcoats.

Q. Do you sell them in other states than New York?

A. Yes, sir.

Q. And do you ship them to customers in other states than New York?

A. Yes, sir.

Q. Name one.

A. Pennsylvania.

Q. What is the fabric of your overcoats?

A. We make all wool overcoats and we also make a cotton back overcoat.

Q. What is the name of your cotton back overcoat?

A. We call it Andecuna.

[332] Q. How did you happen to think of cuna?

A. It probably came about when we wanted to emphasize the softness of a woolly fiber or something.

Q. Is that the definition of cuna?

A. I do not know the definition of cuna.

Q. What connects softness and woolly and that sort of thing with the name cuna in your mind; how do you associate those qualities with that name?

A. I would say I would associate it with the animal vicuña.

Q. Well, when you represent your wool coats to be wool either by express representation or by another trade name or by any other method, are those coats wholly wool?

A. To the best of my knowledge, yes.

By Trial Examiner REARDON:

Q. You do know that your coats are all wool?

A. Yes, sir.

Q. You represent them how? To be what?

A. Wool coats.

[333] Mr. WILLIAMS. You do not know of coats without cotton backing bearing part of the name "vicuña" in there?

The WITNESS. No, sir.

It is stipulated by and between counsel for the Commission and counsel for the respondent that a letter may be received from Doctor Willima H. Dooley of Textile High School, 351 West Eighteenth Street, New York, New York, [334] and that the letter being given to the Examiner may be marked in evidence as an exhibit of the Commission.

[345]

RUSSELL KENT, witness for the Commission.

DIRECT EXAMINATION

By Mr. WILLIAMS:

Q. Of New York?

A. Yes. My residence is Boston.

[346] Mr. WILLIAMS. Now, I am offering this advertisement for identification first, from the Daily News-Record, Tuesday November 7, 1939, by Jacob Siegel Company; of Alpaca coats. It says "overcoats" and "topcoats."

Trial Examiner REARDON. Let it be marked Commission Exhibit No. 85, in evidence, before you begin.

(The advertisement referred to was marked "Commission Exhibit No. 85" and was received in evidence.)

Mr. WILLIAMS. Yes.

By Mr. WILLIAMS:

Q. Now, would you please state—you represent the Daily News-Record?

A. Yes, sir.

Q. And will you describe what the Daily News-Record is?

A. It is essentially a trade paper, sir.

Q. And it comes from where?

A. New York City.

Q. Is its circulation confined to the trade?

[347] A. In the main.

Q. Well, where else is it circulated?

A. Well, it has some newsstand circulation of a restricted nature; it is on sale in some hotel lobbies and on Pennsylvania Avenue in Washington; and I couldn't tell whether it is now, but it was. But essentially it is a trade paper.

Q. But it does reach the public?

A. Not in the sense that the Boston Star does.

Q. Well, it is on the stands?

A. Yes.

Q. And it is exposed to the public?

A. Yes.

Trial Examiner REARDON. It is published in New York City?

The WITNESS. It is published in New York City, sir.

Trial Examiner REARDON. Have you any data on the circulation?

The WITNESS. I wouldn't be in possession of that information, Mr. Examiner.

By Mr. WILLIAMS:

Q. Does that apply to other large cities, like Chicago, Illinois?

A. Yes, sir.

Q. It is on the newsstands there?

[348] A. Yes.

Q. And in some of the hotels?

A. Yes.

Q. Where else?

A. Well, I couldn't give you the cities, but in large cities where there is some demand for it.

Q. And in Philadelphia, too?

A. I am not qualified as a circulation expert. There are five or six cities, but not more than a dozen at the most.

Q. Of the large cities?

A. Yes; where the textile manufacturing industry is located; that would be the situation, sir.

Cross-examination by Mr. McCracken:

Q. It is a textile trade journal?

A. A textile trade journal; yes.

Q. And 95 percent of its circulation is in that respect?

A. Easily.

Mr. McCracken. That's all, sir.

Mr. WILLIAMS. At the same time, sir, and for the same reason, I am just giving samples. I did intend to produce more of that type of material, but since you have made a ruling, of course I don't want to keep on ad infinitum.

Trial Examiner REARDON. Well, you have some more?

Mr. WILLIAMS. Yes; and some more probably on the [349] way. I wish to offer two items from a booklet with a paper back; entitled "A Guide for Retail Advertising and Selling; Second Edition," published by National Association of Better Business Bureaus, Incorporated; distributed by the Better Business Bureau of New York City. And I am calling attention to page 8, and particularly the item No. 34 on that page captioned "Vicuna."

Mr. McCracken. I object to the offer.

[350] Trial Examiner REARDON. Well, I think there has been sufficient shown in that regard, and this would be cumulative, so I will sustain the objection.

Mr. WILLIAMS. That is page 8, item 34.

Trial Examiner REARDON. Well, item 34, on page 8—

Mr. WILLIAMS. And then there is an item, No. 36—

Trial Examiner REARDON. Of the booklet entitled "A Guide for Retail Advertising and Selling, Second Edition," published by National Better Business Bureau. The objection is sustained and it may be marked Commission's Exhibit No. 86, for identification.

(The booklet referred to was marked "Commission's Exhibit No. 86" for identification.)

Mr. WILLIAMS. Excuse me—this is the last time I am going to bother you about this.

Trial Examiner REARDON. It is no bother.

Mr. WILLIAMS. I mean, I don't want to seem unduly pressing about the matter, but I do want to call your attention to page 37, and item 293; and I again say it is offered solely for the purpose of showing the public exposure to the word "vicuna."

Trial Examiner REARDON. Objection sustained, and exception noted; and you will mark this item No. 34, on page 8, as Commission's Exhibit No. 86, for identification, and [351] page 37, item 293, as Commission's Exhibit No. 87, for identification.

Witness excused.

JEROME SAKS, witness for the Commission.

DIRECT EXAMINATION

[351] By Mr. WILLIAMS:

[357] Q. Could I refresh your recollection by looking at a letter that you wrote on October 6th—

Mr. McCRACKEN. Now he is cross-examining his own witness.

Mr. WILLIAMS. No, I am not. As I understand it, if your Honor please—

Trial Examiner REARDON. Off the record.

(There was a discussion off the record.)

Trial Examiner REARDON. On the record.

Mr. WILLIAMS. I would like to show the witness his letter of October 6, 1939, dealing with this subject, for the purpose of refreshing his recollection.

Mr. McCracken. Objected to.

Trial Examiner REARDON. I sustained the objection.

Mr. WILLIAMS. Exception, and I will put it in for identification, please.

Trial Examiner REARDON. The letter referred to may be marked "Commission's Exhibit No. 88," for identification.

(The letter referred to was marked "Commission's Exhibit No. 88" for identification.)

[358] Mr. WILLIAMS. That is all.

[359] ARTHUR LEVY, witness for the Commission.

DIRECT EXAMINATION

By Mr. WILLIAMS:

[360] Q. What is your particular business in that organization?

A. Clothing buyer.

Q. Well, it is one of the leading stores?

A. It is one of the leading stores in all of Washington.

Q. And you confine your business to Washington and the District of Columbia?

A. And vicinity.

[361] Q. How long have you been in this particular establishment?

A. Ten years.

Q. Ten years?

A. Yes.

W. B. GARNISS, witness for the Commission.

DIRECT EXAMINATION

[364] By Mr. WILLIAMS:

[370] Q. Well, Commission's Exhibit No. 77, here, is a photograph of a window in Kann's Store, at 7th and Pennsylvania Avenue. Now, that is the ensemble. Now, here are two—here is a more detailed picture of the breast part of a topcoat, and I call your attention to a medal hanging down from the lapel, and the content of that [showing and indicating to witness]—would that change your impression as to the content of that coat, or any coat bearing that label?

A. Well, a lot of coats in this price range carry a knitted back, which is a cotton back.

Q. With the animal in the middle?

A. Well, it is what I took the alpaca for—that represents the alpaca to me.

[371] The WITNESS. My version of it is that this is an alpaca.

By Mr. WILLIAMS:

Q. And therefore wholly wool?

A. Entirely wool, according to a booklet that I have here.

Q. Now, Mr. Garniss, if you were to purchase a topcoat which, of course, has an interior exposure, and that coat were composed of all-wool fibers, say, alpaca, mohair, and [372] sheep's wool, and then an overcoat were presented to you with the same name, "alpacuna," for instance, with this medal and label on it also inside, would you expect to find the same material in the two coats?

A. Yes; you would find the same material, except one would be a little heavier weight and your price would go up on the yardage.

Q. Yes?

A. With the same construction.

Q. Now, read this advertisement. Would you care to read these as we go along?

Mr. McCracken. I am familiar with them—they are five or six years old.

[373] Mr. WILLIAMS. It is Commission's Exhibit No. 54, of November 18, 1936.

By Mr. WILLIAMS:

Q. Read that ad. if you please, and state what you would expect to find in the way of fiber contents of the article advertised.

A. I would come right back to my argument again; the alpaca.

[374] Q. I am asking you if you were going to read that ad and going to buy a coat, I am asking you—

A. I would say it is alpaca.

Q. Irrespective of the advertisement?

A. Regardless. I am more familiar with it than the public is.

[376] WILLIAM H. RAUBACH, witness for the Commission.

DIRECT EXAMINATION

By Mr. WILLIAMS:

[379] Q. Do you remember that you were talking about that word, and you finally said it was made of alpaca and vicuna, and I said, "Well, why didn't you say that in the beginning instead of at the end?"

A. You were arguing with me for fifteen minutes trying to [380] get me to say that—

Trial Examiner REARDON. No further answer, now. That is simply repetition. You will ask no further questions.

Mr. WILLIAMS. Reflect a moment, your Honor.

Trial Examiner REARDON. I don't think there ought to be another question along that line asked of this witness.

Mr. McCracken. I have no further questions.

Trial Examiner REARDON. Witness excused.

Mr. WILLIAMS. Of course, with the exceptions to your rulings, I except.

Trial Examiner REARDON. Yes; exception noted.

SALLY MUCHMORE, witness for the Commission.

Direct examination by Mr. WILLIAMS:

[381] Q. And then—would you look at these three advertisements that I hand you, marked—

A. (Interposing.) The photographs?

Q. Commission's Exhibits Nos. 77, 78, and 79, and see [382] what you gather from them.

A. That is an alpaca topcoat.

Q. Uh-huh.

A. And I would naturally, from that, assume the same thing; there is no further identification on any of them.

Q. Do you mean by that that the two coats would be, or should be the same cloth?

A. Do you mean as to fiber construction or construction or weaving, or what?

Q. No. I mean, what would be the fiber content of those two coats?

A. I would say that they might not have the same percentage of construction, but as to fibers, it would be the same fibers, without any further identification.

Q. Well, would you expect to find in that set-up there the [383] 35 percent cotton in those overcoats?

Trial Examiner REARDON. She has already said there would be two fibers and that would exclude any other fibers.

Q. I want to know, then—I will ask you this: Are you familiar with the activities in connection with labeling and such things in this general vicinity?

A. Yes. I have been active in it.

[384] Q. Well, can you state whether or not there is an effort on the part of your organization, and kindred organizations with which you are familiar, to emphasize and make the cus-

tomers label and advertisement conscious, what we call advertisement and label conscious?

A. They are two separate things. I would have to talk on two subjects, Mr. Williams.

Q. Well, on both of them.

A. On the subject of advertising the Bureau has, ever since its inception, promoted truth in advertising.

Q. Yes?

A. The Guide for retail advertising and selling that you talk about frequently goes beyond legal definitions for the reason that the Bureau's belief in having advertising not even mislead the consumer from a moral standpoint as well as legal; so therefore, we do in our efforts to promote truth in advertising frequently go beyond the law on the subject. In the past—Oh, for that very reason, to promote consumer confidence, one of Washington's Bureau of Standards is that of fabrics and material contents; and because fabrics might be confusing, the material content should be mentioned in an advertising.

Now, of course, that goes beyond any law. That is because [385] we think consumers are entitled to material content information if they want it, and the easiest way to get it is in the advertising itself.

Q. And your organization is bringing that to the attention of the public all of the time?

A. That is one of our standpoints.

J. F. BALLENGER, witness for the Commission.

DIRECT EXAMINATION.

[396] By Mr. WILLIAMS:

[398] Q. Now, having seen the advertisement of a topcoat under the trade name "Alpacuna," the topcoat being exposed practically in all parts for your examination, and finding that that coat was composed of alpaca, mohair and sheep's wool, and then you were offered an overcoat under the same name

and same label, what would you expect to find as to fiber content?

A. I would expect to find the same content, perhaps a little more of one fiber than the other, and also of a different weight fabric put in an overcoat rather than a topecoat.

Q. Well, would you expect to find a wholly wool coat?

A. Yes, I would.

Q. And you say you have had many years dealing with the public?

A. Fourteen.

POLLY KESSINGER MOORE, witness for the Commission.

DIRECT EXAMINATION

[402] By Mr. WILLIAMS:

[405] Q. Anywhere else in your college, if you know?

A. Yes; they are in the Department of Commerce and in possession of Dr. Marshal.

Q. And they are not in the general library there?

A. I am sorry, but I am not certain about that—that they are there.

Q. You are not certain of that?

A. No.

Q. And these books, you say, are generally used in your class?

A. Oh, yes; there are special reports given on each one of the fibers.

Q. Yes?

A. By the students, that is.

Q. Yes.

[407] Q. Might I ask you if you were to see two coats advertised under the same label and with the medallion, I suppose you might call it, or medal—attached to them, what would you expect to find as to the fiber content of the cloth, that is, would you expect to find them different cloths or the same cloth?

A. At two different prices?

Q. \$35 and \$40. I don't mean as to the weight; there may be some difference as to weight. I am talking about the actual fiber content.

A. Yes, I would; but I wouldn't expect to find the best of vicuna fiber come from that because there are two kinds of fibers coming from the animals; the beard hair and fur hair.

Q. Would you expect to find one coat to be made entirely of, say, alpaca wool and sheep's wool to be made of that; would you expect to find 30% cotton in an overcoat of the same name?

A. Well, I don't think you can really state on percentages.

Q. I don't mean on percentages; I mean any percentage of [408] cotton. If you found a topcoat that was composed of alpaca and mohair and sheep's wool with the same medal, would you expect to find the same fiber content?

A. I am sorry; I don't understand you.

Q. Well, would you expect an essentially different cloth in one than the other?

A. They are both called alpacuna?

Q. And they are both called alpacuna and have the same medallion and the same trade-mark.

A. And would I expect any difference in the cloth?

Q. Would you expect any difference in the cloth—I don't mean in percentage; I mean as to types.

A. I don't know. I guess I just don't understand that. I am sorry.

Q. Well, what would you expect if you found a topcoat, as I say, manufactured of alpaca, mohair, and sheep's wool, and you found a top coat not having a lining, what would you expect to find in the overcoat?

A. And sold under the same label?

Q. Yes.

A. I would expect part alpaca and part vicuna. The other gives you your label for identification.

HARRIET R. HOWE, witness for the Commission.

DIRECT EXAMINATION

[421] By Mr. WILLIAMS:

Mr. McCracken. For the what?

The WITNESS. For the American Home Economics Association—I am in charge of consumer education.

By Mr. WILLIAMS:

Q. Now, what does that work in connection with that organization consist of?

A. Do you mean my particular work?

Q. Yes.

[422] A. The American Home Economics Association has long been interested in all practices which affect the consumer in the economic order, you might say. Of course, consumers do a large amount of buying of family commodities—

Q. Yes?

A. And we believe that family life is made much richer if the housewife is trained so that she uses her resources most effectively. It is my responsibility to help promote some of the activities of the Association.

Q. Well, do I interpret your work correctly, when I say you make an effort to make the public what we now refer to as label-and-advertising conscious?

A. No; it isn't our work to make them more conscious; it is our work to help to get it for them, because they are tremendously conscious of it.

Q. They are conscious of it?

A. Yes. We are overwhelmed with efforts to get help from us. So, part of my job is to answer some of their questions.

Q. So there is tremendous activity among the consumers now?

A. In my opinion; yes.

[426] Q. Well, if you were lecturing on that set of pictures, that is what you would feel justified in telling them, so that is true?

Trial Examiner REARDON. Well, she has just said that is her opinion, so you can't go beyond that.

Mr. WILLIAMS. Maybe I haven't called attention to this one [indicating].

By Mr. WILLIAMS:

Q. Now, I call your attention to—let's see, did I call your attention to No. 85 there? I don't think I did.

Trial Examiner REARDON. I didn't hear you.

Mr. WILLIAMS. Exhibit No. 85, the Daily News-Record which has heretofore been used.

The WITNESS. And your question about this was—

By Mr. WILLIAMS:

Q. The same question: What would you consider to be the fiber content of those coats advertised from the reading of that advertisement?

A. Alpaca, that would be; alpaca and vicuna, and it says there is only one alpacuna, so that you might say this Daily [427] News-Record, I am just a consumer, but I am familiar with trade papers.

Q. Is that so?

A. Yes.

Q. Do they get around amongst you people?

A. Yes.

Mr. WILLIAMS: That is all.

[427] Mr. McCracken. All right. That is not for your opinion, but for the Federal Trade Commission.

[452] HELEN E. CREIGHTON, witness for the Commission.

Direct examination by Mr. WILLIAMS:

[455] Q. And do you have any information of any other books in which that word appears?

A. Yes; I have a list on my assignment.

Q. Can you give me a list?

HELEN E. CREIGHTON—DIRECT EXAMINATION
ALEXANDER FALL—DIRECT EXAMINATION

A. Yes—I didn't bring my assignments with me for the holidays—the Christmas holidays, but I have on that about 18 books that I refer to.

Mr. WILLIAMS. I have something on that upstairs. Could I go up and get those?

[457] Q. And if you had a class and that question came up that is what you would teach the class?

A. Yes.

DIRECT EXAMINATION

[432] By Mr. WILLIAMS:

Q. Your name is Alexander Fall?

A. Yes.

Mr. WILLIAMS. I just want to identify this as coming through the regular channels to the department.

[433] A. Well, that is a radio continuity coming in from that station—

Q. And will you look at this paper and say where it came from and how it came into your hands, in your department.

A. This is a piece of continuity and came from a radio station KGLO, Mason City, Iowa. We requested a radio station to send in all their radio advertising, say, for a period of two weeks, and this was no doubt for the period of October 15 to the 31st.

Trial Examiner REARDON. What year?

The WITNESS. 1939. And this advertisement no doubt was broadcast on October 28th.

[434] By Mr. WILLIAMS:

Q. And in other words, that was received by your department in the regular course of business?

A. That is right.

[435] Mr. WILLIAMS. All right, I just want to put it in for what it is worth anyway. I want to say that the pencil memorandum on there is mine, the typewriting I am offering. I did not want to make erasures and mess it up.

ALEXANDER FALL—DIRECT EXAMINATION

MRS. ERNEST WILLIAM HOWARD—DIRECT EXAMINATION

Mr. McCracken. I have no objection to its form or its content, but I seriously object to its admissibility as binding this respondent; some statement put out by a store in Mason City, Iowa, without reference at all to the respondent hardly seems to me to be anything that is binding on the respondent.

MRS. ERNEST WILLIAM HOWARD—DIRECT EXAMINATION

[449] By Mr. WILLIAMS:

Q. Next, would you expect to find two coats, a topcoat and an overcoat of the same name and labeling, to be of two different fabrics? Or one?

A. You would expect it to be of one fabric. You wouldn't expect it to be one under another or different names.

Q. Now, if you will just please try to confine your answers to my questions.

A. Yes.

Q. Now, I think you said a while ago, like this bill—did you also discuss the Federal Trade Commission rules?

A. Yes.

Q. Now, along with the officers, was this thing brought out among the general organization members?

Trial Examiner REARDON. What do you mean by "this thing"?

Mr. WILLIAMS: The rules.

Trial Examiner REARDON. What has that got to do with it?

Mr. WILLIAMS. Well, because I want to show that they brought out the definition of the word "vicuna."

Trial Examiner REARDON. Are they proposed rules?

[450] Mr. WILLIAMS. Yes.

Trial Examiner REARDON. But they the not adopted yet?

Mr. WILLIAMS. Well, if Your Honor please—

Trial Examiner REARDON. There is plenty of evidence in this case that the word "vicuna" is known. There is an animal called vicuna.

Mr. WILLIAMS. Yes.

Trial Examiner REARDON. It is a question whether these people represented in their advertisements that part of the goods comes from the hair of the vicuna and it is sufficiently proved that such an animal exists, and its hair is used. So there is no need of any further proof on that subject in this case.

Mr. WILLIAMS. Well, that, of course, is pretty broad from my standpoint. If that is considered in the record, of course, I wouldn't have to go much further.

Trial Examiner REARDON. It is in the record. I could show you that.

Mr. WILLIAMS. I wanted to show the propagation of this word in the community.

Trial Examiner REARDON. If anyone represents something—there are a lot of people who don't know what aluminum is—but if people represent something to be aluminum, then that must be aluminum to the people who buy it, even if they don't know what aluminum is, so that is the reason you don't [451] have to go any further with that in this case.

WALTER NORDLINGER, witness for the Commission.

DIRECT EXAMINATION

[476] By Mr. WILLIAMS:

[478] Q. Would you expect to find two coats bearing exactly the same name, one being a type coat and one being an overcoat, to be all turned out of the same fabric?

A. The assumption in my mind would be the same.

Q. Would you expect to find other coats bearing different names of the same fabric as the alpacuna coats; in other words, if it is advertised as one alpacuna coat?

A. I know definitely that is one alpacuna coat, and I know also that the other has the same sort of content.

Q. Would you expect to find some coats of the same content in the streets of Washington?

A. Not exactly the same content, although the ratio of difference is very small.

[479] Q. Is that the practice of all concerns?

A. Not all concerns; no, sir.

Q. Why don't they all use it, if you know?

A. I can't answer that question. Some use "cuna" as part of the name of the coats, and some do not, and you say you do not know why?

A. Frankly, to answer that, the principal reason that it is—

Trial Examiner REARDON. Now, wait a minute. I do not think he should testify as to why he does not know something.

The WITNESS. My answer is it could not be all vicuna.

WALTER NORDLINGER, witness for the Commission.

CROSS-EXAMINATION

[479] By Mr. McCracken:

[482] Q. When did you first begin to consider, may I ask, Mr. Nordlinger, what your reaction was as to this word "alpacuna"? Somebody had been talking to you about this thing recently?

A. No; it goes back approximately five or six years, when I had conversations with various members of the clothing trade as to the fabric content of so-called hair coats.

Q. Yes.

A. What possibly could be implied by manufacturers who use certain names in describing their coats. It goes back several years.

Q. You were then considering what the alpacuna name meant?

A. That is right. Being a prominent coat that was one of the coats I called to my own attention.

Q. It was at that time that you came to the conclusion that the name implied that the coat contained alpaca and vicuna?

A. That is correct—implied to the consumer.

Q. To the consumer?

A. That is right.

REDIRECT EXAMINATION

[483] By Mr. WILLIAM:

Q. If there is a limited supply of vicuna, would you expect to find some vicuna in the coat when it bore that name?

A. Would I?

Q. Yes; you know that there are different coats.

A. No; but as a clothing man I would expect to find it.

Q. As a consumer, would you?

[485] As a matter of fact, you know of a number of manufacturers of overcoats in this business, do you not?

A. Yes, sir.

Q. And do you know of any such manufacturers who, when they sell their coats as wool coats, expressly call them such, or imply that they are in fact wool coats?

A. Actually as represented; yes.

Q. Yes.

A. Oh, yes.

Q. Either implied or actually.

A. Oh, yes; numerous manufacturers advertise goods as being all wool.

Q. And those manufacturers that you talk about ship from one State to another?

A. Surely, they do.

Q. Do you buy some of them?

A. Yes.

[487] Mr. McCracken. Have you ever seen any statement, either in writing or otherwise, that this alpacuna overcoat was an all-wool coat?

The WITNESS. Stated in just those words, "all wool".

Mr. McCracken. Yes.

The WITNESS. I can't say that I have seen that actual statement.

Mr. McCracken. In other words, there is no representation that it is other than what it is that you know of, is there?

The WITNESS. Well, if you are trying to convince me, I still go back to my original remarks, the implication still is there.

[488] Q. Mr. Nordlinger, suppose a person bought a topcoat and the man would ask to see an alpacuna overcoat, would he expect to find—

A. I think the average consumer would assume that he was buying the same fiber content only in a heavier weight.

ROBERT L. COHEN, witness for the Commission.

DIRECT EXAMINATION

[488] By Mr. WILLIAMS.

[489] Q. I call your attention to the headlines on the said exhibit, Commission's Exhibit No. 84, from the Hartford Times, namely, "There is only one genuine alpacuna topcoat."

I also call your attention to the medallion on the detail picture, Exhibit No. 79, where it says: "There is only one alpacuna coat."

A: Yes.

Q. These medallions are placed on both the overcoat and the topcoat under the trade name "alpacuna." Would you expect to find the fiber content of those two coats to be the same?

[490] A. The same, with the exception that probably the overcoat would be more closely woven and heavier.

BYRON F. DIXON, witness for the Commission.

DIRECT EXAMINATION

[494] By Mr. WILLIAMS.

[495] Q. And if you saw a topcoat, which was wool through-
out, [496] being composed entirely of wool, and then were to see an overcoat of the same name, but with a lining where the inside would be covered up, would you expect to find the same cloth in the two coats, or not?

A: I would expect both to consist of the alpaca and vicuna.

Q. I mean, would you expect to find them of the same cloth, but perhaps of different weights?

A. Yes, of different weights, but of the same cloth.

Q. Where was this school; what school was it?

A. I was teaching at this time in McCammon, Idaho.

Q. Was that the geography commonly used in the school system of Idaho?

BYRON F. DIXON—DIRECT EXAMINATION
 BYRON F. DIXON—REDIRECT EXAMINATION
 PRENTISS WILLSON—DIRECT EXAMINATION

A. Commonly used in that system.

Q. What geography was it, do you know, or remember?

A. I can't remember.

Q. What grade?

A. I think it was the seventh or eighth grade. It was at the time we were taking up the study of South America.

Redirect examination by Mr. WILLIAMS.

[500] Q. I want to ask you one further question. I was not very clear about this. Counsel has asked you about different manufacturers making the same type of coat and giving it different names, but you would not expect one manufacturer to put out the same coat under three different names, would you—the same cloth and the same construction all through-out, and say that there is only one; that is, only one alpaca?

A. I think it would be very foolish to do so.

PRENTISS WILLSON, witness for the Commission.

DIRECT EXAMINATION

[500] By Mr. WILLIAMS.

[501] Q. And now, Doctor, I suppose that you have noticed in those advertisements it is stated that this is the only alpaca coat, and, of course, that covers the topcoat and the over-
 [502] coat referred to in the advertisements. Would you expect to find, of this same manufacture, two other coats in Washington of exactly the same type and construction, and what no, under different names?

A. Well, the word to me means a combination of goods. It means the goods which you have in stock, goods made by one manufacturers, and any coat made of that goods is called alpaca.

Q. Would you expect to find the topcoat and the overcoat to be made of different fabrics or the same fabric bearing the same name?

A. If I gave it any thought, I would assume that they are coats made up of certain wools, which may vary in weights, and so forth.

ROBERT K. KOONTZ, witness for the Commission.

DIRECT EXAMINATION

[510] By Mr. WILLIAMS:

[512] Q. And what about the topcoat?

A. The topcoat I knew had cotton in it.

Q. How was it presented to you first, as to the fiber content?

A. The first time it was presented to me, I think it was by a new man, and was presented as an all-wool coat.

Q. An all-wool coat?

A. An all-wool coat.

Q. And was there any indication by him as to the fiber?

A. He was so vague in his idea of the coat, I told him he had better go back and get some information.

Q. Was there any time during your contacts with that coat [513] when there was any indication by the person representing the manufacturer as to the fiber content of it?

A. No; it has been so long ago I wouldn't recall.

Q. You take orders from Virginia and Maryland, and do you deliver to those States?

A. Yes.

[514] Q. Mr. Koontz, if you were to see an advertisement such as is Commission's Exhibit No. 35, Daily News Record, advertising the alpacuna overcoat and topcoat, noting that there is only one alpacuna coat, would you expect to find other coats manufactured and sold by Siegel under different names than that, of the same materials exactly--the same coat, you might say, to use a form of expression?

A. It possibly had the same materials but probably not the same weight and finish.

Q. But you would not expect to find exactly the same coat under different names?

A. No.

Q. If you saw a topcoat, wholly wool, an overcoat of the same name, would you expect to find the same materials in them, or not?

A. Yes.

Q. "Yes?"

A. How is that? Ask that question again.

Q. The same materials.

A. The same materials?

Q. Yes.

[515] A. No; because they wouldn't have to be the same weight.

Q. I do not mean in regard to weight. I am talking about the fiber content.

A. There could be some fiber out of it in order to bring the weight down.

Q. In other words, you mean to say by that that you would expect to find different fibers in the two coats, or different qualities of the same fiber, or just what do you mean by that?

A. Well, I would expect to find at least some of the same fibers in there.

Q. You would expect to find the same fibers but not such a quantity?

A. Different weight; that is right.

Q. Different weight?

A. Yes.

JAMES BERRALL, witness for the Commission.

DIRECT EXAMINATION

[519] By Mr. WILLIAMS.

[520] Q. Would you expect, sir, to find two different cloths in a topcoat and an overcoat, bearing exactly the same name and manufactured by the same company?

A. No; I should think they would be the same fabric.

Q. And would you, or not, expect to find the same company putting the same coat—I am talking about construction—on the [521] market under three different names, and saying that one coat is an alpacuna coat and that there is only one alpacuna coat?

A. You say—

Q. That is rather an involved question, I will admit.

A. It is, rather.

Q. Would you expect to find the same coat put on the market by the same manufacturer under three different names, and saying, in connection with at least one of them, that there is only one alpacuna coat?

A. No; I would not.

GARY TRIPLETT, witness for the Commission.

DIRECT EXAMINATION

[525] : By Mr. WILLIAMS.

[527] Q. Where was this purchase made?

A. In New Haven, Conn.

Q. What store in New Haven, do you remember?

A. Thornton & Howe.

Q. You say that you know of vicuna from having made that purchase. How did it come to your notice?

A. Well, I had been buying clothes there quite a bit, quite regularly before that, and I needed a topcoat, and I went in, and so I just happened to ask what the alpacuna coat was. He said it was wool from a vicuna. That is all I asked him, and that is all he told me.

[529] Q. Would you expect then to find two coats of different materials or of the same material that bore the same name?

A. I would expect them to be the same material.

CLARENCE GROSNER, witness for the Commission.

DIRECT EXAMINATION

[533] By Mr. WILLIAMS.

[535] Q. After consultation with your store, did you form any opinion as to the content of the coat?

Mr. McCracken. He said he did not know.

Mr. WILLIAMS. I am asking him the question, and I am entitled to find out.

Trial Examiner REARDON. Well, off the record again. (There was a discussion off the record.)

By Mr. WILLIAMS:

Q. Now, Mr. Grosner, you wrote a letter to me on October 7th, did you not, in reply to a letter from me?

A. From you; yes; connection with—

Q. In Docket No. 3403.

A. That is correct.

Q. In the Siegel matter.

A. Yes.

[540] Q. I should like to refresh your recollection—understand, I am not trying to contradict you; I am merely going to refresh your recollection as to what you said about it.

A. Well, I say in this letter here—is it all right for me to read it?

Trial Examiner REARDON. Do you state in that letter [541] what the composition was?

The WITNESS. I say: "The cloth is composed"—as a matter of fact, I made a statement which I could not verify. I did as you suggested; I got it from someone who did not know.

Trial Examiner REARDON. That explanation may come afterwards; but at the present time, what is your answer? What did you state was the composition of the coat in that letter?

The WITNESS. The exact wording of it reads: "The cloth is composed of sheep wool, vicuna, alpaca, and Guaranaeo"—I spelled it incorrectly here—

Trial Examiner PEARDON. You have answered. Now, Mr. Grosner, no further answer from you until asked by counsel for the respondent to explain it.

By Mr. WILLIAMS:

Q. Have you any further explanation you care to make in that connection?

A. In what connection?

Q. In connection with the statement that the cloth is composed of sheep's wool, vicuna, alpaca, and Guaranaco, four wool fibers, which, in combination, make a good fleece coat. You want to let that stand, do you?

A. As far as I know, that covers all of the fibers that are used in it; but, as I said before, I am not an authority on [542] fabrics. I don't buy any clothing. I inquired, and that is the information that was handed to me, apparently by someone who didn't know, as the Judge said here, as much about it as he might have known.

Q. But, at any rate, this letter was the best effort you could make to answer the question as to what was contained in an alpacuna coat?

A. Yes; I made inquiry.

[543] Q. You sell in Virginia and Maryland?

A. Yes.

Q. And you buy from a number of manufacturers outside of Washington, I assume?

A. Yes.

Q. Who deliver wool coats, when they are represented to be wool coats, either by express representation or by implication?

A. Certainly not by express reference. We don't buy anything except all-wool merchandise.

Q. When you buy the coats from these people, they are supposed [544] to be all-wool coats?

A. Their reputation is sufficient, of any concern that we buy from.

Q. I think that will be sufficient, sir. In reading that advertisement, which states that there is only one alpacuna coat, would you expect to find another coat of exactly the same construction, under a different name, on the same street in Washington?

A. It would be the same weight. Are you speaking of an overcoat or topcoat?

Q. I am talking about an overcoat now.

A. Well—

Q. Do you expect to find other overcoats bearing different names, of exactly the same construction in every particular excepting the name?

A. Things of that kind have happened in the mercantile business; yes.

[549] Q. Now, you said awhile ago you thought the customer did not pay much attention to the fabric of the coat. I think you also said in that same letter that any well-informed salesman, if asked, would tell him it was made of four fabrics, as above mentioned.

A. Yes; if he was well informed.

Q. Yes; that is what I saw—the salesman.

A. That is just what I thought.

Q. I am asking you what you understand about it; that is all; and, as I say, you understand that a salesman ought to be informed.

Trial Examiner REARDON. No; he cannot testify for his salesmen.

Mr. WILLIAMS. Well, I would like to ask him, subject to exception.

By Mr. WILLIAMS:

Q. The salesmen are supposed to know what they are selling—are they not?

A. Well, they don't know.

[550] Q. They don't know?

A. No. They are supposed to, but they don't know.

CLARENCE GROSNER—DIRECT EXAMINATION
S. E. COHEN—DIRECT EXAMINATION

Q. They don't know?

A. No.

Ex E. COHEN, witness for the Commission.

Direct examination by Mr. WILLIAMS:

[562] Q. Did you ever state to Mr. Joe L. Evins, the gentleman you admit talked with you, as a person having come from the Commission, something like this—

A. I don't admit to talking with the gentleman. I forget—what is the name—

Q. Well, it was some gentleman from the Commission.

A. Yes; that is right.

Q. All right. We will identify him later: "Mr. Cohen stated that he was familiar with the [563] 'alpacuna' overcoats and topcoats, inasmuch as same had been advertised and sold in Washington for several years. He believed the same to be falsely advertised, inasmuch as he stated the name lapacuna would designate a coat consisting of alpaca and vicuna fur or fiber. He stated that he was familiar with the vicuna animal and he knew genuine vicuna overcoats were very dear and most expensive. He advanced the statement that the name 'alpacuna' was adopted by the manufacturer in an effort to simulate the name 'vicuna' inasmuch as the latter name designated a very fine and expensive type of wool."

Trial Examiner REARDON. Wait a minute. Now, you are reading something.

Mr. WILLIAMS. I am asking him if he did not make this statement to this party.

By Mr. WILLIAMS:

Q. (Continuing.) "He stated undoubtedly this motive was behind the adoption of the name, or some other name would have been justified." Did you make any such statement as that to the representative of the Commission?

A. No, sir; I don't know enough about the coat of the vicuna or anything else to have made any such authoritative statement.

[567] Mr. WILLIAMS. Well, I want to have a hearing in Baltimore, I am without testimony that I regard very important, that of Miss Margaret Dana, who is quite well known in the United States in connection with consumers' work. She has written some books and has testified in a good many cases.

[568] Trial Examiner REARDON. Well, we have had a large number of consumer witnesses.

Trial Examiner REARDON. I think we have had enough of those witnesses, Mr. Williams.

Mr. WILLIAMS. Maybe so.

Trial Examiner REARDON. I do not think we ought to have another witness to give cumulative testimony.

Mr. WILLIAMS. I would like to make the offer when the time comes. I am not disagreeing with that, except that I particularly——

Trial Examiner REARDON. Let us go off the record on this discussion for a moment.

Mr. WILLIAMS. I want to present some advertisements [569] that were turned over to me by a letter from F. R. Tripler & Company, December 18, 1939.

Trial Examiner REARDON. These pieces of paper may be marked "Commission's Exhibits, for identification, Nos. 90, 91, 92, 93, 94, and 95," in order.

(The documents referred to were marked for identification "Commission's Exhibits 90, 91, 92, 93, 94, and 95.")

Trial Examiner REARDON. It is conceded that these advertisements, Commission's Exhibits, for identification, Nos. 90, 91, 92, 93, 94, 95, were advertisements published by the concerns named in them?

Mr. McCracken. That is conceded, sir.

Trial Examiner REARDON. I sustain the objection. They are marked for identification.

Mr. WILLIAMS. On which ground, sir?

Trial Examiner REARDON. On the ground that—

Mr. WILLIAMS. Cumulative, did you say?

Trial Examiner REARDON. That they are irrelevant as to the meaning of the word "alpacuna," and they are cumulative, besides, in addition as to being irrelevant as to the meaning of the word "vicuna."

Mr. WILLIAMS. Exception noted. Here is another one that is obviously an advertisement of Saltz, in the Washington Post of December 21, 1939.

[570] Mr. McCracken. The same objection, for the same reason.

Trial Examiner REARDON. I will sustain the objection to it. Do you want that marked for identification?

Mr. WILLIAMS. Yes.

(The document referred to was marked for identification "Commission's Exhibit 96.")

Mr. WILLIAMS. I also offer in that same connection, for the purpose of showing the public exposure to the word "vicuna," and advertisement of B. Altman, February 3, 1937, supplied by B. Altman. I understand that there is no objection as to the method of delivery.

Mr. McCracken. That is right.

Trial Examiner REARDON. What do you mean by "delivery?"

Mr. WILLIAMS. I mean the method of the production of the evidence is not objected to. Put it that way.

Trial Examiner REARDON. And the advertisement is objected to solely upon the same grounds as Exhibits 90 to 96, for identification; the same ruling is made, and it may be marked "Commission's Exhibit 97," for identification.

(The document referred to was marked for [571] identification "Commission's Exhibit 97.")

Mr. WILLIAMS. The next one is the New York Times, October 19, 1937, B. Altman ad., dealing with vicuna.

Trial Examiner REARDON. Just the word "vicuna"?

Mr. WILLIAMS. Oh, no, the whole ad.

Trial Examiner REARDON. What is there in that ad., Mr. Williams, that makes it relevant?

Mr. WILLIAMS. The word "vicuna."

Trial Examiner REARDON. Is that all?

Mr. WILLIAMS. The advertisement of goods, and so forth.

Trial Examiner REARDON. What is there in the advertisement of goods?

Mr. WILLIAMS. My object, I told you, is to show public exposure to the word "vicuna."

Trial Examiner REARDON. I refuse to make any more of the same kind of ads for identification, on the ground that the word "vicuna" appears. I will even refuse to mark it for identification.

Mr. WILLIAMS. I have had a number of them marked and I shall therefore stop in deference to the ruling made. I understand it, then, there is no point in my offering any further testimony in this case showing public exposure to the word "vicuna?"

Trial Examiner REARDON. You have overwhelmed us [572] already, Mr. Williams, as far as that is concerned.

Mr. WILLIAMS. All right, sir. In that connection, I will say that I intended to offer quite some material showing the use of the word "vicuna" and public exposure to it in the schools and libraries and elsewhere in the country.

Trial Examiner REARDON. I take the position on the record that if we never had a single ad. with the word "vicuna" in it we know that there is an animal called the "vicuna," and its fleece has been used in the manufacture of garments, and that is sufficient proof as to representation that there is vicuna in the garment. That is where you can see how far I have gone in admitting all of this evidence.

Mr. WILLIAMS. I understand, then, I am not permitted to produce any further material by way of bibliography or anything else along that line?

NATHAN KOSHLAND, witness for the Commission.

DIRECT EXAMINATION

[574] By Mr. WILLIAMS:

[575] Q. Is your business local business entirely or does it run over into some of the neighboring states?

A. Of course, we have customers come in from neighboring states.

Q. You sell to people and deliver across state lines?

A. Yes, sir.

Q. What is your position?

A. Assistant buyer in the clothing department.

SUSAN G. FORD, witness for the Commission.

DIRECT EXAMINATION

[596] By Mr. WILLIAMS:

[598] Q. I notice that the word "warmth" is put in as one of the emphatic qualities of the coat. What connection does it have as to whether it is cotton or wool? What would the word "warmth" be more associated with, wool or cotton?

A. With wool.

[599] Q. Would you expect to find two coats bearing the same name to be of different cloth content?

A. No.

Q. Would you expect to see an advertisement in Baltimore, such as the one we see here, "There is only one alpacunga coat"—would you expect to find, in view of that advertisement, several of the same type of coat, identical nature, different trade name, in the same town?

A. I would expect to find one kind of coat; one trade name.

Q. I see. So, then, if you saw this advertisement, such as I have shown you, and then you would see one "Andesian" and then another one "Alperu," would you expect them to be of different construction, cloth construction and otherwise?

A. If they are different names, I would expect a different coat.

Q. You would not expect to find exactly the same coat?—A. Not under different names.

Q. Yes.

SUSAN G. FORD—DIRECT EXAMINATION
 SUSAN G. FORD—RE-CROSS EXAMINATION
 THOMAS P. ABBOTT—DIRECT EXAMINATION

[600] Q. How would they compare?

A. May we have the question again?

Q. How would a combination of vicuna, alpaca, and other wool compare in your mind as to the desirability and quality, and so on, with a combination of alpaca and other wool?

A. I would prefer the alpaca and the vicuna.

RE-CROSS-EXAMINATION

[610] By Mr. McCracken:

[612] Mr. McCracken. All right; that is all.

By Mr. Williams:

Q. You are assuming, of course, that in answering those questions that people would read all the ad.

A. Yes.

Q. Is it customary; do people usually read—

Trial Examiner REARDON. She cannot testify to that.

THOMAS P. ABBOTT, witness for the Commission.

DIRECT EXAMINATION

[613] By Mr. Williams:

[621] Q. Well, where wool is emphasized, though, as one of the qualities.

A. I think it is natural.

Q. You would think it is wool in the absence of any qualification?

A. Not if it did not mention wool. If it just said "warmth" I might think of a heater.

Q. That is facetious. Of course, I do not give you credit for that answer to my question. Perhaps I should be more particular in my questions. For instance, I call your attention to an ad known as Commission's Exhibit No. 24, and I call your attention to the characterization of the coat, the quality of the coat. Now, what would you naturally gather from that as to the fiber content as between cotton and wool?

A. I think I would be inclined to think it is wool.

Q. Yes, sir. If you were to see an advertisement covering two coats, a top coat and an overcoat, bearing exactly the same label and the same name, what would you expect to find in those two coats? Would you expect to find the same construction as to cloth and otherwise?

[622] A. It depends on the price.

Q. Well, say, \$35 for the topcoat and \$40 for the overcoat.

A. Well, I would naturally expect them to be similar.

EDWIN MORGENTHAU, witness for the Commission.

DIRECT EXAMINATION

[624] By Mr. WILLIAMS:

[625] Q. Now, Mr. Morgenthau, when you see "Warmth" emphasized in an ad, what idea does that convey as to fiber construction, as between cotton and wool, for instance?

A. Well, it is usually wool.

[626] Q. And in your advertising—you are familiar with advertising, are you?

A. Yes.

Q. And you are familiar with customer reaction to advertising, are you?

A. Yes.

Q. In advertising, do you consider, from your experience, that small type is any fair qualification to very large emphatic type?

Mr. McCracken. Objected to.

Trial Examiner REARDON. Objection sustained.

Mr. WILLIAMS. Exception, of course.

By Mr. WILLIAMS:

Q. And in connection with that "warmth" I might call attention to advertising known as Commission's Exhibit No. 18. Does that in any way change your view of that at all?

Q. What would that indicate by reason of the description?

A. A wool garment.

[627] Q. When you refer to fleeces ordinarily, what is the meaning of "fleece"?

A. Construction of the fabric rather than content.

Q. That is your understanding?

A. Yes.

Q. What is the primary meaning?

A. I do not understand the question.

Trial Examiner REARDON. Do you know the primary meaning of the word "fleece"?

The WITNESS. Fleece, yes. Wool from an animal.

By Mr. WILLIAMS:

Q. Will you examine the advertisement marked "Commission's Exhibit No. 22," and state what, if anything, that conveys to you as to the fiber content of the overcoat advertised?

A. That it is a wool garment.

Q. And what else as to particular fibers?

A. Well, from the trade name, as I said in the beginning, it is alpaca and vicuna.

Q. Thank you, sir. Now, I ask your attention, sir, to Commission's Exhibit No. 1-G and ask you to examine that ad and state from your observation of customer reaction to advertising whether or not there would be any clarification by reason of that ad.

Mr. McCracken. I object to customer reaction.

Trial Examiner REARDON. Objection sustained.

[628] By Mr. WILLIAMS:

Q. What would they gather from that ad?

Trial Examiner REARDON. Objection sustained.

Mr. McCracken. No objection to his reaction.

Trial Examiner REARDON. You must start another question. That has been sustained.

By Mr. WILLIAMS:

Q. I wish to call your attention to what I would call a graph herein indicating the construction of this particular coat. You notice the alpacuna overcoat and a lot of type running from what I would call inch-high type down to the ordinary type. Then I call your attention to the legend in the right-hand cor-

ner of the lower graph, which depicts something that looks like a brush, and ask you if that qualification is, in your opinion, as a man experienced in this line of work, a fair qualification of the other heavier type.

Mr. McCracken. I object to that.

Trial Examiner REARDON. Objection sustained.

Mr. WILLIAMS. Exception noted. Of course, I understand—

[629] By Mr. WILLIAMS:

Q. Now, Mr. Morgenthau, what would you expect to find as to fiber construction of two overcoats bearing exactly the same name? For instance, an advertisement like that, one dealing with a topcoat and one dealing with an overcoat. What would you expect to find as to fiber construction? The same or different?

Trial Examiner REARDON. Why not put the question this way: If you saw "Alpacuna" in an overcoat and "Alpacuna" in a topcoat, what would you expect to find?

The WITNESS. I would expect to find the same quality.

By Mr. WILLIAMS:

[630] Q. Well, I am asking you, sir, would you normally expect to find that kind of condition, the coats, exactly the same, where one is advertised as "Alpacunna," and no substitutes?

A. I would normally expect to find—

Q. What?

A. That condition.

Q. You would normally expect to find that condition, even though it said there was no substitute of Alpacuna?

A. Yes.

Q. Why would you expect to find that?

[631] A. My experience in the retail business has taught me that it is a common practice.

Q. My recollection is that you said you are familiar with customer reaction to advertising, what they would expect.

A. Yes.

EDWIN MORGENTHAU—DIRECT EXAMINATION
 WALTER SONDHEIM—DIRECT EXAMINATION
 EDWARD W. BERRY—DIRECT EXAMINATION

Mr. WILLIAMS. After that refreshment of the Examiner's mind on that subject, I would like to ask the question again.

Trial Examiner REARDON. I sustained the objection to the question, regardless of whether he has knowledge of customer reaction.

Mr. WILLIAMS. All right, sir. You understand when I ask these questions it is to get it into the record so there will be no misunderstanding in the future.

WALTER SONDHEIM, Witness for the Commission.

DIRECT EXAMINATION

[640] Q. All right, I will ask the same question that I asked a while ago, whether or not—

Trial Examiner REARDON. Excuse me for interrupting. I think it will be conceded by everybody what when you speak of a wool garment it connotes warmth.

[641] Mr. WILLIAMS. And vice versa?

Trial Examiner REARDON. What do you mean vice versa?

Mr. WILLIAMS. Warmth connotes wool?

Trial Examiner REARDON. When referring to fabrics, wool and warmth associate together. Let me ask a question just for my own information? You have heard of Palm Beach suits?

The WITNESS. Yes, sir.

Trial Examiner REARDON. Would you consider a Palm Beach three-piece suit would connote warmth in weather like we have today, or weather like we have had recently, 13 above Zero?

The WITNESS. I should think not.

EDWARD W. BERRY, witness for the Commission.

DIRECT EXAMINATION

[642] By Mr. WILLIAMS:

Q. Dr. Berry, are you familiar with the word "vicuna"?

A. Yes.

By Mr. WILLIAMS:

Q. Now, suppose you state your name, business connection, or professional connection.

A. My name is Edward W. Berry, and I am Professor at Johns Hopkins University.

Q. And what other position do you hold besides being professor?

A. Dean in the College of Arts and Sciences.

Q. Am I correct in saying that your profession brings you in contact with text books, and all that sort of thing?

[643] A. Well, yes.

Q. Are you able to state where this word would appear in the text books of which you have knowledge?

Trial Examiner REARDON. Have you any connection as a writer with any text books that carry hair-bearing animals whose hair is used in cloth?

The WITNESS. No; not at all.

Trial Examiner REARDON. Then, this question is put to him in the same way as it would be put to any citizen.

Mr. WILLIAMS. Yes. I am merely asking the question where he can point to me what places he can point out that refer to vicuna in connection with the school school system—or point out for the benefit of the Commission.

The WITNESS. Well, I think the term is used in most high school geographies as an animal in the high Andes; it is wool-bearing.

By Mr. WILLIAMS:

Q. Any other places that you know of personally?

A. No; I do not think so. Of course, vicuna is always discussed in travel books on South America, because they are a very wonderful animal. And I do not think I should have known anything about them, but I have been in South America, in the Andes, and I have seen the animals.

Q. Then, as I understand you, the school children are exposed to the word "vicuna" through the books?

A. Yes.

Q. Could you give a list of those books?

A. I have a couple of them in my brief case.

EDWARD W. BERRY—CROSS-EXAMINATION
JOE L. EVINS—DIRECT EXAMINATION

Trial Examiner REARDON. Well, it is unnecessary.

Cross-examination by Mr. McCracken:

Q. As I understand you, Doctor, the animal is mentioned in text books on geography as a part of the fauna of South America?

A. Yes.

Q. Just as the jaguar is mentioned?

A. Yes.

Q. And the armadillo and various other animals in South America, the boa constrictor, and so on; and any child reading a book on South America would know that there is a vicuña, jaguar, boa constrictor, and so on. That is all there is to your testimony?

A. That is right.

JOE L. EVINS, witness for the Commission.

DIRECT EXAMINATION

[645] By Mr. WILLIAMS:

Q. Will you please state your name and business connection?

A. My name is Joe L. Evins, attorney with the Legal Investigation Staff of the Federal Trade Commission.

Q. And also known as—

A. Attorney-Examiner.

Q. How long have you been in such capacity, Mr. Evins?

A. Over five years.

Q. Did you have occasion to interview one S. E. Cohen, Highland Street and Wilson Boulevard, Arlington, Virginia, on November 16, 1939?

A. I did.

[647] Trial Examiner REARDON. Read the questions and [648] answers of Mr. Cohen.

Mr. WILLIAMS. Yes. It starts on page 556. "Q. Do you recall a young man who called at your place of business on November 16, 1939, and asked you about this coat?" Mr. McCracken objected.

"Trial Examiner REARDON. Proceed with the question.

"Q. Do you recall a young man calling on you and representing himself as coming from the Commission?

"A. Yes.

"Q. And he talked to you about the Alpacuna coat on November 16, 1939?

"A. I don't recall the date.

"Q. And do you remember having a talk as to the meaning of the word 'Alpacuna'?"

Mr. McCracken objected.

"Trial Examiner REARDON. Yes, yes. What was the last question?

"I sustain the objection and will note an exception.

"Mr. WILLIAMS. I would like to ask this one question for the record, sir.

"Trial Examiner REARDON. All right. Go ahead.

"Mr. WILLIAMS. I would like now to call the witness' [649] attention to an interview had with him by one of the staff of examiners on November 16, 1939, or thereabouts, during which the said examiner asked him about the meaning of the word 'Alpacuna' and its implications. I want to take up that line of inquiry, and I do that to give him a chance to explain what he understood by that interview, so that when I call upon the party—

"Trial Examiner REARDON. I will let the witness answer.

"Do you recall such an interview?

"The WITNESS. Yes; I recall the interview.

"Trial Examiner REARDON. He recalls the interview.

"Mr. WILLIAMS. All right.

"Q. Do you recall Mr. Joe E. Evins?

"Trial Examiner REARDON. Ask him if he did—"

"Mr. WILLIAMS. At this junctive, I offer respectfully to read to you from authoritative books"—and so on. Then skipping over to page 561:

"Mr. McCracken. No; this is cross-examination as to the whole conversation.

"Mr. WILLIAMS. I would like to get my questions in the record, and you can rule on them, and I want an [650] exception.

"Trial Examiner REARDON. All right; but you are just wasting time on that. It is cross-examination of your own witness."

And so on.

Then—

"Q. Did you ever state to Mr. Joe L. Evins, the gentlemen you admit talked with you, as a person having come from the Commission, something like this—

"A. I don't admit to talking with the gentleman. I forget—what is the name—

"Q. Well, it was some gentleman from the Commission.

"A. Yes; that is right.

"Q. All right. We will identify him later.

"Mr. Cohen stated"—

I am reading from his statement—

"Mr. Cohen stated that he was familiar with the 'Alpacuna' overcoats and topcoats, inasmuch as same had been advertised and sold in Washington for several years. He believed the same to be falsely advertised, inasmuch as he stated the name Alpacuna would designate a coat consisting of alpaca and vicuna fur or fiber."

Trial Examiner REARDON. What is this?

Mr. WILLIAMS. I am reading the record. I read [651] that statement to him from the investigational record.

Trial Examiner REARDON. Yes.

Mr. WILLIAMS (continuing). "He stated that he was familiar with the vicuna animal and he knew genuine vicuna overcoats were very dear and most expensive. He advanced the statement that the name 'Alpacuna' was adopted by the manufacturer in an effort to simulate the same 'vicuna' inasmuch as the latter named designated a very fine and expensive type of wool.

"Trial Examiner REARDON. Wait a minute. Now, you are reading something.

"Mr. WILLIAMS. I am asking him if he did not make this statement to this party.

"Q. (continuing.) 'He' stated undoubtedly this motive was behind the adoption of the name, or some other name would have been justified.' "

This statement is in quotations appearing in the record.

"Did you make any such statement as that to the representative of the Commission?

"A. No, sir; I don't know enough about the coat of the vicuna or anything else to have made any such authoritative statement."

There is a lot more between counsel and the Examiner, and so on.

[652] Trial Examiner REARDON. I will permit the question. The question should be: Did Mr. Cohen state to [653] you at an interview at the time referred to in the questions what was read from the record as having been stated to you?

The WITNESS. Mr. Examiner, what statements were read and what statements appear in the record are a true and accurate summary of the statements made by Mr. Cohen, not possibly his exact words.

Trial Examiner REARDON. All right. I think that is sufficient.

Cross-examination by Mr. McCracken:

[653] Q. Who made up the summary, Mr. Evins?

A. I took notes as to what the witness said—may I have your name?

Q. McCracken.

The WITNESS. I am not in the habit of making up false statements for the record.

By Mr. McCracken:

Q. Mr. Evins, I did not indicate that. I asked you who made up the summary.

A. I did.

Q. And in your interview with Mr. Cohen I assumed that you asked him certain questions?

[654] A. I did.

Q. In other words, you did not just go in and say, "Mr. Cohen, my name is Evins, and I want you to tell me all you know about the Alpacuna overcoat"; you asked him certain searching questions.

A. Right.

Q. And, among other things, you asked him whether or not he heard of vicuna, did you?

A. Whatever the record states.

Q. Well, do you recall?

A. I can look at the record and tell you.

Q. All right.

Trial Examiner REARDON. You may if you cannot recall without refreshing your recollection.

The WITNESS. I remember generally at this time my interview with Mr. Cohen.

By Mr. McCracken:

Q. Yes?

A. He seemed most enthusiastic when I broached the subject and went so far as to draw a coat from his stock and indicate that this was a similar practice to what some other manufacturer was doing.

Q. A similar practice?

A. Yes.

Q. What was a similar practice?

[655] A. That of labeling a coat with a name like Apallama.

Q. Yes?

A. For instance, he would say that was a combination of alpaca and llama.

Q. Yes?

A. And Alpacuna was a combination of the fibers of the alpaca and vicuna.

Q. Did he indicate that Alpacuna was made of alpaca and vicuna?

A. I don't recall. Whatever I stated in the record is true and accurate.

Q. Yes; I have no doubt of that, but I am trying to find out the way in which it was arrived at between you and Mr. Cohen. You, I presume, said to him, "Now, I am here from the Federal Trade Commission——"

JOE L. EVINS—CROSS-EXAMINATION

A. Yes.

Q. "And I am interested in the Alpacuna overcoat."

Did Mr. Cohen say that he sold the Alpacuna overcoat?

A. No. As I recall, I don't believe he sells or has sold the Alpacuna overcoat.

Q. Did he say he was familiar with it?

A. Yes; because he is a competitor of retailers who are selling it.

Q. And you asked him whether or not in his judgment the [656] name might not indicate that the garment was made of alpaca and vicuna wool or hair?

A. In substance that is correct.

Q. That is what you asked him. And do you remember what he said in response to that?

A. He said what in substance was stated in my report, that he was familiar with vicuna—

Q. Yes.

A. And that undoubtedly there was some motive behind the adopting of such a name.

Q. That was his opinion as to the motive?

A. Yes.

Q. But did he say as a matter of fact that the name meant to him alpaca and vicuna? Did he say that?

A. Whatever I stated in the record.

Q. All that you are now prepared to say is what you stated in the record as an accurate summary to the best of your recollection of the conversation?

A. Yes; made from notes which I took at the time.

Q. You did not hear Mr. Cohen testify before the Commission?

A. No; I did not.

Q. Are you familiar with a great many other name, trade names, that end in "cuna" an applying to men's garments?

A. I can't say that I am familiar with a great number; no.

[661] Mr. WILLIAMS. I offer these ads.

[662] Trial Examiner REARSON. I will sustain an objection to them on my own ground that they are cumulative. We have enough in the record.

Mr. WILLIAMS. May I have these identified?

Trial Examiner REARDON. Identify them as Commission's Exhibit No. 101 for identification, to whatever number it goes to.

(The advertisements were marked "Commission's Exhibits No. 101, 102, 103, 104, -A and -B, 105, 106, 107, 108, 109, 110, and 111," for identification.)

Mr. WILLIAMS. Now, it is understood, Mr. McCracken, that these advertisements that I have offered, having been rejected, would have the typical meaning to the general public who come in contact with that word.

Mr. McCracken. That is right.

Trial Examiner REARDON. And they were excluded on the ground that they are cumulative.

Mr. WILLIAMS. On the ground that they are cumulative, yes.

Trial Examiner REARDON. Yes.

ROBERT W. TEST, witness for the Commission.

DIRECT EXAMINATION

[666] By Mr. WILLIAMS:

[668] Q. I say, would you expect to find the same concern which advertises "There is only one Alpacuna coat," exactly the same coat under the name "Andesian," for instance, or "Alperu," where they say "There is only one Alpacuna?"

A. That means there is only one coat sold under those two combinations of fabric in it. Unless it is Alpacuna, it could not be those two combinations.

Q. Suppose there is a hundred yards of the cloth, would you expect to find an advertisement saying "There is only one Alpacuna," when a third of that might be sold under "Alpacuna," a third sold under "Alperu," and a third sold under "Andesian" made out of the same cloth?

A. It would be rather confusing. I wouldn't know what to [669] think.

Q. What would you expect to find? Would you expect to find in another town a coat of exactly the same set-up with cloth and everything as this Alpacuna coat when it advertises "There is only one Alpacuna coat" and that it can be obtained only at certain places?

A. I would certainly feel that that was the only place I could get it.

Q. You mean the same construction of coat, do you?

A. Same construction.

Q. I hand you another advertisement, Commission's Exhibit No. 18 and ask you to look at it and see what conclusion you come to in the same respect with regard to that advertisement. It is Gimbel's November 22, 1937, Pittsburgh Sun-Telegraph, Pittsburgh, Pennsylvania.

A. Now, your question is what?

Q. What impression would you gather from that as to the fiber content?

A. That if I wanted a coat with the fleece of the four animals, the only way I could get it is in the Alpacuna coat.

Q. What would you expect to find as to the fiber content, the ones you can name, if any? What fibers could you name?

A. Well, from the description, they say four, but at least I would find alpaca and vicuna, according to the name, the way they brought the name together.

[670] Q. Yes.

A. I would be disappointed if I did not find those two.

Q. And Commission's exhibit no. 13 (handing the exhibit to the witness)?

A. Well, I will say the same thing there.

Q. You would expect to find what?

A. I would expect to find a combination of the wools of this fabric.

Q. You would expect to find some alpacuna and vicuna in that coat?

A. I couldn't read it without getting that understanding from the advertisement.

[671] Q. In a case where two coats have the same name, would you expect to find two different cloths in those two coats, or two differently constructed cloths?

A. Under the same trade mark?

Q. Yes.

A. I would expect to find the same coat.

[672] Q. I show you Commission's Exhibit No. 1-G and call your attention to that ad. Would you carefully look at that ad—that is, it is not an ad but it is part of a mat, a newspaper mat, that was supplied by the respondent.

A. (After examining the exhibit.) This would indicate that there was only one fur-bearing animal whose coat was used in weaving of this fabric. According to this "A furbearing animal" it does not mention two. And it mentions the cotton back.

REDIRECT EXAMINATION

[684] By Mr. WILLIAMS:

Q. I understood counsel to say that there is some testimony in the record to show that the derivation of this word arose by the adoption of "alpac" from alpaca and "una" from the Latin word meaning one. I think the record will show that that is qualified but for the purpose of the record we will assume that that is the derivation given by the respondent. What would that indicate to you—one alpaca? What would that indicate as to the fiber content? Would you expect two or three fibers, or would you expect alpaca alone, one fiber?

A. One fiber.

Q. In other words, you would interpret the word, if it is made up, to mean that [684] there would be one fiber and that is the alpaca; is that right?

A. I would think so.

[685] Q. I show you Commission's Exhibit No. 22. Read that and see what you gather from that advertisement as to the fiber content of the coat. Read the whole thing. What would

ROBERT W. TEST—REDIRECT EXAMINATION
MRS. ESTHER COLE RICHARDSON—CROSS-EXAMINATION

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you gather from that ad as to the fiber content of that coat, Mr. Test?

A. Well, the same as I said before, that the indication of the advertisement is, that it is a combination. "There is only one"—that is the trade-mark.

Q. And as to the fiber content?

A. The fiber content would be wool.

Q. What particular fibers, as far as you can tell from that?

A. Well, a combination of those two.

A. Alpaca and vicuna?

A. Yes.

Q. So it would mean to you what you said originally?

A. I originally thought exactly the same thing as I do now.

[920] Mrs. ESTHER RICHARDSON, witness for the Respondent.

Cross-examination by Mr. WILLIAMS:

[979] Mr. McCracken. I object to the question.

Trial Examiner REARDON. State your question.

Mr. WILLIAMS. Will you please read that question back?

[980] Q. You said a moment ago that some people manufacture all-wool coats that are lined?

A. Yes.

Q. Secondly, that other people manufacture wool coats that, as far as the people can see on the surface, would have a cotton backing and a lining.

A. That is right.

Q. How am I going to find out what is behind that lining?

A. Then, you think it is an intent to deceive?

Q. I am asking you.

A. No, I don't. I know that there are all wool coats lined,
[981] and I know that there are cotton backs.

Q. But the customer can't tell that the other coat has a cotton back without tearing the lining out?

A. By tearing the lining—

120 MRS. ESTHER COLE RICHARDSON—CROSS-EXAMINATION

Q. The only way they can tell is by tearing the lining out.

[982] By Mr. WILLIAMS:

Q. Madam, I am still going to persist on that question, unless I am stopped.

I stated a while ago—I asked a question in the form of a statement, which you objected to. I asked you, do you think it is fair for advertising to the public to put forth the type of advertising which forces a customer to rely upon the store as to the material content?

Mr. McCracken. There is no evidence in this case that any such advertising has ever been put out by anybody in connection with this case.

Mr. WILLIAMS. There are advertisements galore in this case simply saying "Alpacuna coat," without giving the material content.

By Mr. WILLIAMS:

Q. You are talking with your prior knowledge, or assuming prior knowledge. I am talking now about the fact that you start off with the premise that one coat is manufactured wholly of wool. You can't tell whether it is wholly of wool.

A. That is right. No one can tell.

Q. Another coat is manufactured, as far as one can tell, of wool, and anything that is not wool is covered by a lining. [983] And you say that a customer is not obliged, then, to go to the store to find out what the second coat is made of?

A. The answer to that question, it seems to me, is this—

Q. Well, answer that question specifically.

A. I have to depend on them to tell me the outside is wool. I can't even tell by my own sight if the outside is wool.

Q. Assuming—

[984] Q. Suppose it had 33⅓ percent cotton fabric and the rest is wool.

A. It would be wool and cotton.

The WITNESS. That is right. It is a wool coat.

Trial Examiner REARDON. And then if they want more information they make further inquiry.

MRS. ESTHER COLE RICHARDSON—CROSS-EXAMINATION 121

The WITNESS. That is right. The coat is a wool coat and it may have a cotton backing and a rayon lining.

By Mr. WILLIAMS:

[985] Q. Would it be advertised that way?

A. It should be. I don't know. I am not a copywriter.

Q. Do you know, Mrs. Richardson, that when these coats here are made with a cotton backing that cotton backing is an integral part of the material of which the coat is constructed, isn't it?

A. Yes.

Q. It is an integral part of the coat.

A. Yes.

Q. The lining is not.

A. It is an integral part of the whole.

[986] Q. I am talking about the material. Everybody in the world knows about the lining being different from the coat construction, as a rule.

A. Yes; I really think that is true.

Q. I say, would you advertise an alpacuna coat as a wool coat? An overcoat, I mean.

[987] A. It should be advertised as a wool coat with a cotton backing, definitely.

Q. Yes.

A. And it is a mistake on the part of somebody, because they really brag about it.

Q. Then, may I ask you this: Do you think it is fair to allow a type of advertising which is involved in advertising Alpacuna, legend and so on—to allow such advertising to go out to the public, as this has been going out to the public, without any mention of a cotton backing?

A. I don't believe that anything that deceives the public should be allowed.

Q. Do you think, then, that a manufacturer ought to be allowed to put in the hands of retailers—now, I am not impugning anybody's integrity. Call it a mistake if you want to—to put a type of label and a type of trademark and a type

122 MRS. ESTHER COLE RICHARDSON—CROSS-EXAMINATION

of coat on the market which will enable a retailer to do such advertising as you do—and I assume you did without thinking—do you think it is fair to have a set-up like that as to coat and label and trade name?

A. Do you mean it is wrong to deceive? Is that the idea?

Q. I am giving you a factual situation.

A. Anything that deceives is wrong. That happens to be a mistake in the ad.

Q. I may say there are hundreds in the record of the same [988] thing.

A. When you buy a coat you are told it has a cotton backing.

[990] Q. How would you know it had a cotton backing?

A. The salesman will tell you.

Q. Then, my statement is correct that there is no way, from the way this article is put out, for a customer to know what the fiber content is in the entire coat except relying upon the store?

A. May I say there is no way the customer will know how anything is made up unless I rely on the store.

[993] Q. Then, as I said a while ago, do you think it is fair for the manufacturer to place the customer absolutely in the hands of the retailer to find out what the content of the coat is without destroying the coat proper?

A. Yes. Yes.

Q. That is perfectly proper?

A. The retailer tells the customer.

Q. As you did in that advertisement?

A. That advertisement is a mistake, I grant you.

Q. But who made that mistake possible?

A. Well, now, I will have to tell you, a copywriter often makes mistakes.

Trial Examiner REARDON. What advertisement are you referring to.

Mr. WILLIAMS. Commission's Exhibit 114. That is in evidence.

PHYLLIS RUBIN, witness for the Respondent.

By Mr. WILLIAMS:

CROSS-EXAMINATION

[1104] Q. Now, I hand you Commission's Exhibit 115 for identification, which appears to be a general type of advertisement gotten out to cover the Alpacuna top coat, and this one particularly comes from the Young Men's Shop in Washington, D. C. Is there anything in there to indicate that is anything but wool? This advertisement looks like a general advertisement apparently specially prepared, it looks like the type we find prepared for certain advertising; this one is addressed to Mrs. M. R. Wilson, 1445 Otis Place, North West, Washington, D. C. Is there anything to indicate that is anything but wool?

A. No, at a quick glance, I would say no.

[1105] Q. Nothing at all?

A. No.

Q. When an overcoat is advertised with that same descriptive matter, or without any descriptive matter, say, if the overcoat is advertised "Alpacuna overcoat," and without descriptive matter in there, having seen this advertisement before—

A. Yes.

Q. (Continuing.) What impression would you get from this advertisement as to the fiber content of the overcoat if the same label, Alpacuna, appeared on that overcoat?

A. I would expect to get the surface material and all wool material.

Q. Why do you say "surface material"; this does not say anything about surface material.

A. No; but that is understood, the same way as the suit includes things that go into it.

Q. I am talking about the cloth, the coat; what would you have to indicate to you that the cloth of the Alpacuna overcoat would or would not be the same as the cloth in the Alpacuna topcoat?

A. For the simple reason the topcoats are usually made of lighter weight cloth.

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PHYLLIS RUBIN—CROSS-EXAMINATION
MURIEL BROWN—CROSS-EXAMINATION

Q. That is all well and good, but I am talking about fiber content, the fiber. Is there anything to indicate to anybody under those circumstances that the fiber or cloth in one coat, say, the topcoat, would be different from the fiber or the cloth in the overcoat?

A. There is nothing to indicate that.

Q. Would any one seeing this advertisement, having it mailed to them—

[1111] Q. When people become well known to you and become worthwhile customers, you give them credit?

A. That is right.

Q. They sometimes then get advance notice of sales?

A. Yes.

Q. And they are the recipients of various other courtesies usually shown to people known as your customers?

A. Yes.

MURIEL BROWN, witness for the respondent.

CROSS-EXAMINATION

[1128] By Mr. WILLIAMS:

[1131] Q. One of your duties is to ascertain the pull of advertisements.

A. Yes.

Q. The more pull the advertisements have, the more business you people get from the business men who place advertising?

A. Yes. I mean, if none of the ads should pull, there would not be any advertising.

Q. One of the big things in making up advertising is developing a pull?

A. I would say that would be very desirable.

Q. It is also essential, is it not?

A. It is the common goal.

Q. So, therefore, the customer and the manufacturer have a common [1132] goal?

A. Also the Store.

[1215] Mr. WILLIAMS. I want to say, as a matter of convenience, you can put this in if you want to, that: "Wool is defined as the fiber from the fleece of the sheep or lamb, or hair of the angora or cashmere goat, and may include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna, which has never been reclaimed from any woven or felted wool product."

I call attention to the fact that "Vicuna" is spelled v-i-c-u-n-a.

[1216] Mr. WILLIAMS. I would also like to call attention, if your Honor please, to this small paper which has been marked [1217] Commission's Exhibit 118 for identification, which is entitled, "The Successful Tailor," Copyright 1938, John B. Ellison & Sons, Inc., Philadelphia, Pa., October-November, 1939.

Trial Examiner REARDON. Off the record.

(There was a discussion off the record.)

Trial Examiner REARDON. On the record.

Mr. WILLIAMS. I offer Commission's Exhibit 118 for identification, in evidence.

Mr. McCracken. I object to that.

Mr. WILLIAMS. On the ground it is cumulative?

Mr. McCracken. Yes.

Trial Examiner REARDON. The objection is sustained.

Mr. McCracken. I will admit that Wanamaker's, Gimbels, Strawbridge and Clothier, Lit's, and other stores have customers living in states other than Pennsylvania, and that those stores deliver goods to the homes of those customers.

NEWSPAPER MAT SERVICE



JACOB SIEGEL COMPANY

PHILADELPHIA

The
World's Finest
Combination of
WARMTH, WEAR
and **LIGHTER**
WEIGHT

NATIONALLY MAINTAINED RETAIL
PRICE THE YEAR AROUND

\$
40

AND LOOKS AND FEELS
LIKE SIXTY-FIVE...



There is only ONE

ALPACUNA OVERCOAT

AND—IT'S AMERICA'S GREATEST SELLER

It's warm—marvelously warm and silky—ready to defy the bitterest sub-zero days. Yet it's light—amazingly light and soft—comfortable as a top-coat. And it's sturdy—wonderfully durable—you can wear it year in and year out—it never loses its silky luxury or its swaggering distinctive lines. It's got everything you could possibly want in an overcoat—and at this price it's the out-and-out sensation of the year.

ALPACUNA overcoats are beautifully hand tailored throughout . . . by master craftsmen who tailor nothing but ALPACUNA coats the year around. Developed in raglan and ulster models that faithfully reflect Fifth Avenue custom styling. With half belts and belts all around . . . single and double breasted . . . and great coats that look like a million dollars.

26.3% WARMER

than eight wool fabrics of equal weight
— and 10.6% warmer than fabrics 1 1/2
times heavier

1 1/2 POUNDS LIGHTER

ALPACUNA weighs 24 ounces per
yard. The accepted overcoatings weigh
32 ounces.

61% LONGER WEARING

than eight other famous wool overcoat
fabrics—by actual scientific abrasion
machine tests.

**NATIONAL CLOTHING CO.
ROCHESTER**

AD No. 100

FEDERAL TRADE COMMISSION
Bundel No. 3403 COMMISSIONER'S Exhibit No. 1-B
IN THE MATTER OF *Joseph S. Liggett Co.*
DATE *10/27/39* WITNESS *[Signature]*
REPORTER *[Signature]*
ETHEL E. FISHER Official Reporter

There is only one ALPACUNA Overcoat

AND—IT'S AMERICA'S GREATEST SELLER



26.3% WARMER

than eight wool fabrics of equal weight—and 100% warmer than fabrics 1½ times heavier

1½ POUNDS LIGHTER

ALPACUNA weighs 34 ounces per yard. The accepted overcoat weighs 32 ounces.

61% LONGER WEARING

than eight other famous wool overcoat fabrics—by actual scientific abrasion machine test.

The World's Finest Combination of WARMTH, WEAR and LIGHTER WEIGHT

It's warm—marvelously warm and silky—ready to defy the bitterest sub-zero days. Yet it's light—amazingly light and soft—comfortable as a topcoat. And it's sturdy—wonderfully durable—you can wear it year in and year out—it never loses its silky luxury or its swaggering distinctive lines. It's got everything you could possibly want in an overcoat—and at this price it's the out-and-out sensation of the year.

UNUSUALLY LOWEST RETAIL PRICE FOR THE YEAR AROUND

'40

AND LOOKS AND FEELS LIKE SIXTY-FIVE

MAURICE L. ROTHSCHILD
MINNEAPOLIS CHICAGO ST. PAUL

AD No. 101

The World's Finest Combination of
**WARMTH · WEAR &
LIGHTER WEIGHT**



• 26.3% Warmer
than eight wool fabrics
of equal weight and
100% warmer than
fabrics 1½ times
heavier

• 1½ Pounds
Lighter
ALPACUNA weighs
34 ounces per yard.
The accepted overcoat
weighs 32 ounces.

• 61% Longer
Wearing
than eight other
famous wool overcoat
fabrics—by actual
scientific abrasion
machine test.

Nationally Maintained
Retail Price the Year
Around

\$40

And Looks and Feels
Like Sixty-Five . . .

// There is only ONE // ALPACUNA OVERCOAT and—It's America's Greatest Seller

It's warm—marvelously warm and silky—ready to defy the bitterest sub-zero days. Yet it's light—amazingly light and soft—comfortable as a topcoat. And it's sturdy—wonderfully durable—you can wear it year in and year out—it never loses its silky luxury or its swaggering distinctive lines. It's got everything you could possibly want in an overcoat—and at this price it's the out-and-out sensation of the year.

ALPACUNA overcoat—are beautifully hand tailored throughout by master craftsmen who tailor nothing but ALPACUNA coats the year around. Developed in raglan and ulster models that faithfully reflect Fifth Avenue custom styling. With half belts and belts all around—single and double breasted—and great coats that look like a million dollars.

STIEGERS
SPRINGFIELD HARTFORD

AD No. 102

FEDERAL TRADE COMMISSION
Order No. 3403
IN THE MATTER OF *Stiegers & Co.*
DATE *9-7-36* BY *Philip*
RECEIVED BY *Philip*
WHEEL & FISHER, National Registrar

26.3% WARMER

than eight wool fabrics of equal weight—and
18.8% warmer than fabrics 1½ times heavier.

1½ lbs. LIGHTER 61% LONGER WEARING

ALPACUNA weighs 34 ounces per yard.
The accepted overcoatings weigh 32 ounces.

than eight other famous wool overcoat fabrics
—by actual scientific abrasion machine tests.



There is only one ALPACUNA OVERCOAT and—It's America's Greatest Seller

It's warm—marvelously warm and silky—ready to defy the bitterest sub-zero days. Yet it's light—amazingly light and soft—comfortable as a topcoat. And it's sturdy—wonderfully durable—you can wear it year in and year out—it never loses its silky luxury or its swaggering distinctive lines. It's got everything you could possibly want in an overcoat—and at this price it's the out-

\$40

Nationally maintained retail price the year around

The World's Finest Combination of Warmth, Wear and Lighter Weight

JORDAN MARSH CO.
BOSTON

AD No. 103



THERE IS
ONLY ONE

ALPACUNA OVERCOAT

And—It's America's Greatest Seller

It's warm—marvelously warm and silky—ready to defy the bitterest sub-zero days. Yet it's light—amazingly light and soft—comfortable as a topcoat. And it's sturdy—wonderfully durable—you can wear it year in and year out—it never loses its silky luxury or its swaggering distinctive lines. It's got everything you could possibly want in an overcoat—and at this price it's the out and out sensation of the year.

ALPACUNA overcoats are beautifully hand tailored throughout... by master craftsmen who tailor nothing but ALPACUNA coats the year around. Developed in raglan and ulster models that faithfully reflect Fifth Avenue custom styling. With half belts and belts all around... single and double breasted... and great coats that look like a million dollars.

Nationally Maintained Retail Price The Year Around

\$40

And looks and feels like sixty-five.

The World's Finest Combination of
Warmth, Wear and Lighter Weight

26.3% WARMER than eight wool fabrics of equal weight—and 18.8% warmer than fabrics 1½ times heavier.

1½ POUNDS LIGHTER—ALPACUNA weighs 34 ounces per yard. The accepted overcoatings weigh 32 ounces.

61% LONGER WEARING than eight other famous wool overcoat fabrics—by actual scientific abrasion machine tests.

WARNER CO.
BALTIMORE

AD No. 104

FEDERAL TRADE COMMISSION
Receipt No. 3403
IN THE MATTER OF
DATE 1/1/39
J. Edgar Hoover
J. Edgar Hoover



The
World's Finest
Combination of
**WARMTH
WEAR and
LIGHTER
WEIGHT**

There is only **ONE**

ALPACUNA OVERCOAT

And—It's America's Greatest Seller

It's warm—marvelously warm and silky—ready to defy the bitterest sub-zero days. Yet it's light—amazingly light and soft—comfortable as a topcoat. And it's sturdy—wonderfully durable—you can wear it year in and year out—it never loses its silky luxury or its overgearing distinctive lines. It's got everything you could possibly want in an overcoat—and at this price it's the out-and-out sensation of the year.

ALPACUNA overcoats are beautifully hand tailored throughout... by master craftsmen who tailor nothing but ALPACUNA coats the year around. Developed in rayon and other models that faithfully reflect Fifth Avenue custom styling. With half belts and belts all around... single and double breasted... and great coats that look like a million dollars.

NATIONALLY MAINTAINED RETAIL
PRICE THE YEAR AROUND

\$40

AND LOOKS AND FEELS
LIKE SIXTY-FIVE

26.3% WARMER

Than eight wool fabrics of equal weight—and .085% warmer than fabric 1 1/2 times heavier.

1 1/4 POUNDS LIGHTER

ALPACUNA weighs 24 ounces per yard. The accepted overcoatings weigh 32 ounces.

61% LONGER WEARING

than eight other famous wool overcoat fabrics—by actual scientific abrasion machine tests.

**HARRY SUFFRIN
DETROIT**

AD No. 105

FEDERAL TRADE COMMISSION

Order No. 3703

IN THE MATTER OF

DATE 10/2/53

WILLIAM E. FINKEL, CHIEF, Bureau

There is
only **ONE**
**Alpacuna
Overcoat**
and—It's
America's Greatest Seller



26.3% WARMER

than eight wool fabrics of equal weight—and .085% warmer than fabric 1 1/2 times heavier.

1 1/4 POUNDS LIGHTER

ALPACUNA weighs 24 ounces per yard. The accepted overcoatings weigh 32 ounces.

61% LONGER WEARING

than eight other famous wool overcoat fabrics—by actual scientific abrasion machine tests.

Sturdy, Stylish, Soft, Warm, and the Best

\$40

And Looks and Feels Like Sixty-Five

The World's Finest Combination of Warmth, Wear and Lighter Weight

It's warm—marvelously warm and silky—ready to defy the bitterest sub-zero days. Yet it's light—amazingly light and soft—comfortable as a topcoat. And it's sturdy—wonderfully durable—you can wear it year in and year out—it never loses its silky luxury or its overgearing distinctive lines. It's got everything you could possibly want in an overcoat—and at this price it's the out-and-out sensation of the year.

ALPACUNA overcoats are beautifully hand tailored throughout... by master craftsmen who tailor nothing but ALPACUNA coats the year around. Developed in rayon and other models that faithfully reflect Fifth Avenue custom styling. With half belts and belts all around... single and double breasted... and great coats that look like a million dollars.

**POGUES
CINCINNATI**

AD No. 106

61%
LONGER WEARING

26.3% 1½ lbs.
WARMER • LIGHTER



There is only one
Alpacuna Overcoat
and—It's America's Greatest Seller

Nationally Main-
tained Retail Price
The Year Around

\$40

And Looks and
Feels Like
Sixty-five

It's warm—marvelously warm and silky—ready to defy the bitterest sub-zero days. Yet it's light—amazingly light and soft—comfortable as a topcoat. And it's sturdy—wonderfully durable—you can wear it year in and year out—it never loses its silky luxury or its swaggering distinctive lines. It's got everything you could possibly want in an overcoat—and at this price it's the out-and-out sensation of the year.

ALPACUNA overcoats are beautifully hand tailored throughout . . . by master craftsmen who tailor nothing but ALPACUNA coats the year around. Developed in raglan and ulster models that faithfully reflect Fifth Avenue custom styling. With half belts and belts all around . . . single and double breasted . . . and great coats that look like a million dollars.

26.3% Warmer than eight wool fabrics of equal weight—and 18.6% warmer than fabric 1½ times heavier.
1½ Pounds Lighter ALPACUNA weighs 24 ounces per yard. The accepted overcoating weight 32 ounces.
61% Longer Wearing than eight other famous wool overcoat fabrics—by actual scientific abrasion machine tests.

THE METROPOLITAN
DAYTON

AD No. 107



There is only ONE
Alpacuna Overcoat

AND—IT'S
AMERICA'S GREATEST
SELLER

*The World's Finest Combination of
Warmth, Wear and Lighter Weight*

It's warm—marvelously warm and silky—ready to defy the bitterest sub-zero days. Yet it's light—amazingly light and soft—comfortable as a topcoat. And it's sturdy—wonderfully durable—you can wear it year in and year out—it never loses its silky luxury or its swaggering distinctive lines. It's got everything you could possibly want in an overcoat—and at this price it's the out-and-out sensation of the year.

ALPACUNA overcoats are beautifully hand tailored throughout . . . by master craftsmen who tailor nothing but ALPACUNA coats the year around. Developed in raglan and ulster models that faithfully reflect Fifth Avenue custom styling. With half belts and belts all around . . . single and double breasted . . . and great coats that look like a million dollars.

NATIONALLY MAINTAINED RETAIL
PRICE THE YEAR AROUND

\$40

AND LOOKS AND FEELS
LIKE SIXTY-FIVE

26.3% WARMER than eight wool fabrics of equal weight—and 18.6% warmer than fabric 1½ times heavier.
1½ POUNDS LIGHTER ALPACUNA weighs 24 ounces per yard. The accepted overcoating weight 32 ounces.
61% LONGER WEARING than eight other famous wool overcoat fabrics—by actual scientific abrasion machine tests.

COTTRELLS
DENVER

AD No. 108

FEDERAL TRADE COMMISSION
Docket No. 3403, ALPACUNA's Exhibit No. 1-F
IN THE MATTER OF JAMES J. JAGEL CO.
DATE 10/27/57
RECEIVED: ALPACUNA

*A Miracle of Nature duplicated
by a Miracle of Science...*

THERE IS ONLY ONE

ALPACUNA OVERCOAT

And—It's America's Greatest Seller



The Alpacuna Fabric is a Scientifically Accurate
Duplication of the Coat of a Fur Bearing Animal.

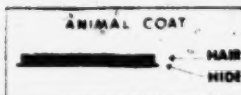
26.3% Warmer • 1½ Pounds Lighter • 61% Longer Wearing

There are other reasons, too, for the amazing success of Alpacuna—its fashion correctness, its unmatched luxuriousness, its unfailing dependability, its tremendously superior value, and the fact that it is the product of highly concentrated, specialized tailoring. Alpacuna coats are tailored the year 'round by tailors who work on nothing else but Alpacuna coats.

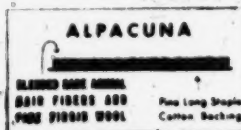
Naturally Maintained
Price the Year 'Round

\$40

AND LOOKS AND FEELS
LIKE SIXTY-FIVE



These Two Diagrams Illustrate the
Similarity Between the Alpacuna
Overcoat and the Animal's Overcoat



● NOTE that in the animal coat the hairs are ALL ON THE FACE. The back of the coat is a thin, soft, pliable skin. It is this hair or wool on the face that protects the animal against heat or cold without excessive weight.

● NOTE that Alpacuna fabric is identical. The animal fibers also are all on the face. The fine, long-staple cotton back serves the same function as the hide or skin of the animal's coat, banding together about 35,000 hair fibers to the square inch.

MAX ADLER
SOUTH BEND

AD No. 309

FEDERAL TRADE COMMISSION
Bureau No. 3703
IN THE DAY
DATE 10/2/37
J. Edgar Hoover
F. B. I.

There is only ONE
Alpacuna

Overcoat

And—It's America's Greatest Seller

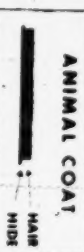
A Miracle of Nature

Duplicated by

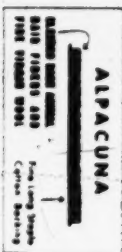
A Miracle of Science

\$40

And Looks and Feels Like Sixty-Five



These Two Diagrams Illustrate the
Similarity Between the Alpacuna
Overcoat and the Animal's Overcoat



● **ANIMAL COAT**—Note that in the animal coat the hairs are ALL ON THE FACE. The back of the coat is a thin, soft, pliable skin. It is this hair or wool on the face that protects the animal against heat or cold without excessive weight.

● **ALPACUNA**—Note that Alpacuna fabric is identical. The fine, rare animal hair fibers also are all on the face. The fine, long-staple cotton back serves the same function as the hide or skin of the animal's coat, banding together about 35,000 fine, rare hair fibers to the square inch.

It is this scientific duplication of nature's marvelous handiwork that makes Alpacuna overcoats 26.3% Warmer 1½ Pounds Lighter 61% Longer Wearing

FREDERICK LOESER CO.
BROOKLYN

AD No. 310

There is Only One ALPACUNA OVERCOAT

And—It's America's Greatest Seller



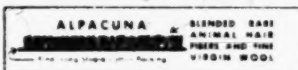
A Miracle of Nature duplicated by A Miracle of Science

The Alpacuna Fabric is a Scientifically Accurate
Duplication of the Coat of a Fur Bearing Animal.

THESE TWO DIAGRAMS ILLUSTRATE THE SIMILARITY BETWEEN THE ALPACUNA OVERCOAT AND THE ANIMAL'S OVERCOAT



NOTE that in the animal coat the hairs are ALL ON THE FACE. The back of the coat is a thin, soft, pliable skin. It is this hair or wool on the face that protects the animal against heat or cold without excess weight.



NOTE that Alpacuna fabric is identical. The animal fibers also are all on the face. The fine, long staple cotton back serves the same function as the hide or skin of the animal's coat, binding together about 35,000 hair fibers to the square inch.

It is this scientific duplication of nature's marvelous handiwork that makes Alpacuna overcoats

26.3% WARMER • 1½ POUNDS LIGHTER • 61% LONGER WEARING

There are other reasons, too, for the amazing success of Alpacuna—its fashion correctness, its unmatched luxuriousness, its unfailing dependability, its tremendously superior value, and the fact that it is the product of highly concentrated, specialized tailoring. Alpacuna coats are tailored the year-round by tailors who work on nothing else but Alpacuna coats.

NATIONALLY
MAINTAINING
PRICE THE
YEAR-ROUND

\$40

AND LOOKS
AND FEELS LIKE
SIXTY-FIVE

ARNOLD CONSTABLE CO.
FIFTH AVENUE NEW YORK

Back to
Nature

IS THE SECRET OF
SUCCESS OF

Alpacuna
Overcoats



These two diagrams illustrate the similarity between the Alpacuna overcoat and the animal's overcoat.

ANIMAL COAT



NOTE that in the animal coat the hairs are ALL ON THE FACE. The back of the coat is a thin, soft, pliable skin. It is this hair or wool on the face that protects the animal against heat or cold without excess weight.

ALPACUNA

BLENDED HAIR
ANIMAL HAIR
FINE VIRGIN WOOL

NOTE that Alpacuna fabric is identical. The animal fibers also are all on the face. The fine, long staple cotton back serves the same function as the hide or skin of the animal's coat, binding together about 35,000 hair fibers to the square inch.

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Nationally Maintaining Price the Year-Round

\$40

And Looks and Feels Like Sixty-Five

LARKEY CO.
NEWARK

AD No. 312

AD No. 311

RECEIVED TRADE COMMISSION
Bureau No. 3483
ON THE MATTER OF
DATE 3/27/38
J. Edgar Hoover
DIRECTOR



A Miracle of Nature DUPLICATED BY A Miracle of Science

The Alpacuna Fabric is a Scientifically Accurate
Duplication of the Coat of a Fur Bearing Animal

26.3% WARMER
1½ POUNDS LIGHTER
61% LONGER WEARING

There are other reasons, too, for the amazing success of Alpacuna—its fashion correctness, its unmatched luxuriousness, its unflinching dependability, its tremendously superior value, and the fact that it is the product of highly concentrated, specialized tailoring. Alpacuna coats are tailored the year 'round by tailors who work on nothing else but Alpacuna coats.

There is only ONE

ALPACUNA Overcoat

AND—IT'S AMERICA'S GREATEST SELLER

THESE TWO DIAGRAMS ILLUSTRATE THE SIMILARITY BETWEEN THE ALPACUNA OVERCOAT AND THE ANIMAL'S OVERCOAT



↑ NOTE that in the animal coat the hairs are ALL ON THE FACE. The back of the coat is a thin, soft, pliable skin. It is this hair or wool on the face that protects the animal against heat or cold without excessive weight.

Nationally Maintained Price the Year 'Round

\$40

and Looks and Feels Like Sixty-Five

MEYERS BROS. SPRINGFIELD

AD No. 313



THERE IS ONLY ONE

Alpacuna Overcoat

AND IT'S AMERICA'S GREATEST SELLER

A MIRACLE OF NATURE DUPLICATED BY A MIRACLE OF SCIENCE

ANIMAL COAT—Note that in the animal coat the hairs are ALL ON THE FACE. The back of the coat is a thin, soft, pliable skin. It is this hair or wool on the face that protects the animal against heat or cold without excessive weight.

ALPACUNA—Note that Alpacuna fabric is identical. The fine, rare animal hair fibers also are all on the face. The fine, long-staple cotton back serves the same function as the hide or skin of the animal's coat, binding together about 35,000 fine, rare hair fibers to the square inch.

It is this scientific duplication of nature's marvelous handwork that makes Alpacuna Overcoats
26.3% WARMER • 1½ POUNDS LIGHTER • 61% LONGER WEAR

There are other reasons, too, for the amazing success of Alpacuna—its fashion correctness, its unmatched luxuriousness, its unflinching dependability, its tremendously superior value, and the fact that it is the product of highly concentrated, specialized tailoring. Alpacuna coats are tailored the year 'round by tailors who work on nothing else but Alpacuna coats.

NATIONALLY
MAINTAINED
PRICE THE
YEAR 'ROUND

\$40

AND LOOKS AND FEELS
LIKE SIXTY-FIVE

FAMOUS-BARR CO. ST. LOUIS

AD No. 314

Post 3403
in the 1937
DATE 12/1/37
RECEIVED
ST. LOUIS, MO.
J. Edgar Hoover

Commission's Exhibit

No 1-J

PLATE 10

A MIRACLE OF NATURE *duplicated by* A MIRACLE OF SCIENCE



Nature Knows Best!

That is Why
ALPACUNA
America's Biggest Selling Overcoat
Duplicates Nature's Own Handiwork

● NOTE that in the animal-coat the hairs are **ALL ON THE FACE**. The back of the coat is a thin, soft, pliable skin. It is this hair or wool on the face that protects the animal against heat or cold without excessive weight.

● NOTE that Alpacuna fabric is identical. The animal fibers also are all on the face. The fine, long-staple cotton back serves the same function as the hide or skin of the animal's coat, binding together about 35,000 hair fibers to the square inch.

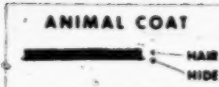
It is this scientific duplication of nature's marvelous handiwork that makes Alpacuna overcoats

26.3% Warmer
1 1/2 Pounds Lighter
61% Longer Wearing

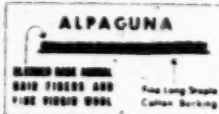
There are other reasons, too, for the amazing success of Alpacuna—its fashion correctness, its unmatched luxuriousness, its unflinching dependability, its tremendously superior value, and the fact that it is the product of highly concentrated, specialized tailoring. Alpacuna coats are tailored the year round by tailors who work on nothing else but Alpacuna coats.

BLOCKS
INDIANAPOLIS

AD No. 315



These two diagrams illustrate the similarity between the Alpacuna Overcoat and the Animal's Overcoat



Nationally Maintained Price
The Year Round

\$40

AND LOOKS AND FEELS
LIKE SIXTY-FIVE



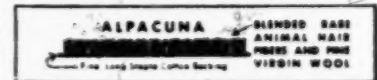
There is only One **ALPACUNA OVERCOAT**

And—It's America's Greatest Seller

THESE TWO DIAGRAMS ILLUSTRATE THE SIMILARITY BETWEEN THE ALPACUNA OVERCOAT AND THE ANIMAL'S OVERCOAT



● NOTE that in the animal coat the hairs are **ALL ON THE FACE**. The back of the coat is a thin, soft, pliable skin. It is this hair or wool on the face that protects the animal against heat or cold without excessive weight.



● NOTE that Alpacuna fabric is identical. The animal fibers also are all on the face. The fine, long-staple cotton back serves the same function as the hide or skin of the animal's coat, binding together about 35,000 hair fibers to the square inch.

IT IS THIS SCIENTIFIC DUPLICATION OF NATURE'S MARVELOUS HANDIWORK THAT MAKES ALPACUNA OVERCOATS

26.3% WARMER • 1 1/2 POUNDS LIGHTER • 61% LONGER WEARING

There are other reasons, too, for the amazing success of Alpacuna—its fashion correctness, its unmatched luxuriousness, its unflinching dependability, its tremendously superior value, and the fact that it is the product of highly concentrated, specialized tailoring. Alpacuna coats are tailored the year 'round by tailors who work on nothing else but Alpacuna coats.

Nationally Maintained Price
The Year Round

\$40

AND LOOKS AND FEELS
LIKE SIXTY-FIVE

FRANKELS
DES MOINES

AD No. 316

FEDERAL TRADE COMMISSION
Receivd No. 3403
IN THE MATTER OF
DATE 10/17/34
BY WILLIAM F. FINNER

RECEIVED
JAN 10 1937
U.S. DEPT. OF JUSTICE
RECEIVED
JAN 10 1937
U.S. DEPT. OF JUSTICE
RECEIVED
JAN 10 1937
U.S. DEPT. OF JUSTICE

QUESTIONS AND ANSWERS

about

ALPACUNA
OVERCOATS

\$40



QUES. What is ALPACUNA?

ANS. Alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guernsey and Texas Sheep.

QUES. Is this an unusual combination?

ANS. Yes, this combination of hair and wool is the result of 9 years of scientific experimentation.

QUES. What advantages does this unusual fabric give the wearer?

ANS. Four advantages, not found in any other overcoat.

QUES. Are they definite advantages? If so, name them!

ANS. Greater warmth—lighter weight—longer wear—and unmatched luxuriousness.

QUES. Can you prove those statements?

ANS. Absolutely—modern science proves them as FACTS.

See following for the scientific results of tests made of the Alpacuna fabric by America's leading textile engineers—The National Textile & Research Corporation of Philadelphia.

26.3% WARMER **1 1/2 POUNDS LIGHTER** **61% LONGER WEARING**

Tests made by the National Textile & Research Corporation of Philadelphia prove this to be a scientific fact.

ALPACUNA weighs 34 ounces per yard. The weighted overcoat weighs 12 ounces. That combined with ALPACUNA's greater warmth and durability makes ALPACUNA a unique blend of a scientific discovery.

The famous overcoat fabric was tested alongside of ALPACUNA in an automatic machine. Two coats after 1,000 rubbings—none other than ALPACUNA—showed no wear.

Studying the sources of the famous Alpacuna fabric is a real geography lesson. From the South American Andes we took the warm, light silky hairs of the Alpaca. From the valleys of old Peru we took the fine lustrous coat of the Guernsey. From the plains of Turkistan we took the sturdy durable hairs of the Angora. From the Texas Panhandle we chose the thickest, warmest, and richest sheep's wool. They were all brought together and scientifically blended into a fabric that's unmatched for richness, luxury, warmth, light weight, long wear.

ALPACUNA overcoats are beautifully hand tailored throughout. Developed in England and winter models. With half belt and half all around—single and double breasted.

CLEVELAND LISTED Reg. U. S. Pat. Off.

THE UNION

COLUMBUS

OHIO

AD No. 101

There is only one Alpacuna



ALPACUNA
It's the wonder of the
overcoat world
\$40

Really—it belongs in the Ripley "Believe It or Not" collection. 61% longer wearing than the average coat. 26.3% warmer than the average coat—and most amazing of all, 1 1/2 pound lighter than the average coat. And that's by laboratory tests of America's leading textile engineers.

CLEVELAND LISTED

THE NATIONAL

ROCHESTER

AD No. 104

There is only one Alpacuna



Warmth—from the
icy Andes

ALPACUNA
OVERCOATS

woven from the blizzard-
defying hairs of the Alpaca

The Alpaca lives in the Andes mountains—and he can tell you that the weather in the Andes is something terrific. At noon the temperature may be as high as 100°—at midnight it will be way below freezing. But the alpaca doesn't mind. Nature has given him a unique coat that withstands both extreme cold and extreme heat.

Alpacuna overcoats, loomed from alpaca hairs, do for you what the animal's coat does for him—combine amazing warmth, amazing long wear and amazing light weight.

\$40

CLEVELAND LISTED

Overcoats—single-breasted, double-breasted—single-breasted—half belt, full belt.

Wm. Taylor & Son
CLEVELAND

AD No. 105

There Is Only ONE

ALPACUNA

The Most Dramatic and Compelling Overcoat Story in Overcoat History

ALPACUNA is the culmination of over eight years of scientific laboratory textile research work to produce a fabric that would combine ALL the LUXURY of the most EXPENSIVE imported hair fabrics with GREATER WARMTH...LIGHTER WEIGHT...AND MORE DURABILITY. That these efforts have been finally crowned with success is attested to by the way men, everywhere, have enthusiastically welcomed ALPACUNA and have shown their enthusiasm by purchasing.

ALPACUNA has been the only ONE real step forward in the last twelve years in the art of overcoat making. ALPACUNA has revolutionized the overcoat field...the day has gone by when men want to wear heavy "weighty" overcoats...men have come to realize that "weight DOES NOT make warmth."

So, you have here, in ALPACUNA, a story that in newspaper language is known as a "scoop." Here, then, is the most dramatic and compelling overcoat story in overcoat history...YOU have the exclusive right to publish this story in your City. No other store in town can tell it but YOU.

Take advantage of this "scoop." Tell this story over and over again, because it is the kind of a story that will bear repeating, and in telling it you will DEFINITELY increase your overcoat business.

**"IT PAYS TO ADVERTISE WHEN YOU HAVE
A PRODUCT LIKE ALPACUNA."**

"The Overcoat House"

JACOB SIEGEL COMPANY

317 NORTH BROAD STREET
PHILADELPHIA

Alpacuna is woven from the hair of the Alpaca, which lives in the Andes mountains, where the temperature is apt to change in a single day from 100° at noon to 10° below freezing at night.



ALPACUNA OVERCOATS

the greatest combination of warmth, wear and
lightweight known in clothing history

\$40

It's warm—marvellously warm and silky—ready to defy the bitterest sub-zero days. Yet it's light—amazingly light and soft—comfortable as a topcoat. And it's sturdy—wonderfully durable—you can wear it year in and year out—it never loses its silky luxury or its swaggering distinctive lines. It's got everything you could possibly want in an overcoat—and at this price it's the out-and-out sensation of the year.

CELANESE LINED

Trade Mark Reg. U. S. Pat. Off.

Laboratory tests by the Industrial Research Corporation, the country's leading textile engineers, prove scientifically that Alpacuna is

**26.3%
warmer**

than eight fabrics of equal weight—and 10.6% warmer than fabric 11½ times heavier. Actual tests by the Industrial Research Corporation of Philadelphia prove this to be true.

**61% longer
wearing**

Six famous overcoat fabrics were tested alongside of Alpacuna on an abrasion machine. Two failed after 1,000 rubbings—two after 6,000—Alpacuna withstood over 9,000 rubbings, or 91% more.

**1½ lb.
lighter**

Alpacuna weighs 34 ounces per yard. The standard overcoat weighs 52. That combined with Alpacuna's greater warmth and durability makes Alpacuna nothing short of a revelation among overcoats.

Don't doubt it. Before this season's overcoats—lighter and warmer—half sold in both old and new.

MAURICE L. ROTHSCHILD

Minneapolis

CHICAGO

St. Paul

There is only one Alpacuna

ALPACUNA OVERCOATS



*tested and
proved*

to be the best combination of warmth,
long wear and light
weight known

\$40

*26.3% warmer
*61% longer wear
*1½ lbs. lighter

*Figures by Industrial Research Corp.

Warm enough to withstand the "worm blizzard" since '93—light enough to be comfortable at any time—luxurious enough to satisfy the most exacting taste—durable enough to "take it" year after year and keep coming back for more—and on top of all that, a value that's downright unbelievable


CELANESE LINED
Made under U.S. Pat. 2,187,087

Blue, brown, oxford, snowflake—raglans, ulsters—half belt and full belt models

FRANKELS
DES MOINES

AD No. 111

There is only one Alpacuna



this picture gives
you an idea why

ALPACUNA OVERCOATS

represent the greatest combination of
warmth, wear and light weight
known to the clothing world

\$40

The alpaca is a packing animal used extensively in South America. On its weary trekkings in the Andes mountains it encounters temperatures ranging from over 100° at noontime to way under freezing at night. Nature has given the hair of these animals properties that protect it against cold as well as heat—and that's why these Alpacuna coats, which are made from the light hairs of the alpaca, combine such amazing warmth with such amazing light weight

CELANESE LINED
Made under U.S. Pat. 2,187,087

LABORATORY TESTS PROVE:

*26.3% warmer
*61% longer wear
*1½ lbs. lighter weight

*Figures by Industrial Research Corporation

HARRY SUFFRIN
DETROIT

AD No. 112



Alpacuna

a new step forward
in overcoats

\$40

Raglans, half belts, full belts. Rich shades of brown, blue, oxford and snowflake

CELANESE LINED
Made under U.S. Pat. 2,187,087

LABORATORY TESTS PROVE:

*26.3% warmer
*61% longer wear
*1½ lbs. lighter weight

*Figures by Industrial Research Corporation

J. N. ADAMS CO.
BUFFALO

PLATE 16



Scott's show was of the new breed, a peeing O'course. A bigger double-trigged with bent all-round with a little helping of the... a sticking and the peeing of peacocks.

Comp. Ex. 13
10.1.1

POST OFFICE, CHANDLER, ILL.
 BOX 110
 CHANDLER, ILL. 13
 DEPT. OF AGRICULTURE
 OFFICE OF THE SECRETARY
 WASHINGTON, D. C.



REG. U.S. PAT. OFF.
WARMTH WITHOUT WEIGHT

26.3%

WARMER

 $1\frac{1}{2}$

**POUNDS₄
LIGHTER**

6.1%

LONGER WEARING

There is only one Allpacross

EXCLUSIVE
AT THE
METROPOLITAN

ALPACUNA
OVERCOATS

The World's Finest Combination of Warmth, Water and Light Weight. Born in the South American Andes the warm, light alloy hat of the Alpaca from the valleys of the Peruvian Andes, east of the Guadalupe, has the plants of "alpaca" the staple during the heat of the Andes from the Tasso. Alpaca: the richest, warmest and richest wool. They were brought together and scientifically bred into the Alpaca fabric that are unmatched for warmth, water, warm, light weight and ease. Available in smartest new models and distinguished new colors.

2nd page - the name of Charles . 2nd page

\$45

And looks like
SIXTY-FIVE.

METROPOLITAN Ludlow at Fourth

ONE OF AMERICA'S FINE STORES FOR MEN AND BOYS

ALPACUNAS ARE EXCLUSIVE WITH US IN MINNEAPOLIS

Nicollet at 4th—Mey Store

Radisson Store—Hotel Radisson



FEDERAL TRADE COMMISSION

Order No. 340-10-22-15

In the matter of JACOB VEGEL

Dated OCT 20 1937

HODGES &

ALPACUNA OVERCOATS

give you greater warmth,
lighter weight, more wear,
and bigger value at

\$
45

Scientists took a hand in creating this coat. They combined four rare fleeces—not only to give you the greatest possible warmth and insulation from zero blasts—but to give you lighter weight and longer wear. Alpacuna is a marvel of their amazing skill. It's carefully tailored into smart, easy draping styles, has a silky, luxurious feel and is priced by us to give you a value that is just as astonishing as the fabric itself.

FREE PARKING FOR OUR CUSTOMERS

for one hour while you make a purchase in our store—at Auto Park,
adjacent to Palace Bldg., or on former site of Metropolitan Theater

MAURICE L. ROTHSCHILD

Com. Ex. 16 for ad

PAID BY THE ADVERTISER
 Order No. 340,000
 a full order of *Secret Agent Co.*
 dated OCT 30 1939

ORDERED BY *Photo-Liaison*
 PEOPLE'S BUSINESS AND TRAVEL



scientifically woven
 from the hairs of
 four different
 animals



THE ALPACA

In the snowy peaks of the
 South American Andes lives
 the alpaca—with his long, long
 soft and beautiful coat of



THE GUANACO

The Guanaco inhabits the val-
 lées of picturesque Peru; his
 coat is famous for its extreme
 fineness



THE ANGORA

The wind-swept plains of An-
 talya, Turkey is the home of
 the Angora, with his curved
 and durable hair



THE SHEEP

From our own Texas Panhandle
 comes the sheep, with wool
 of marvelous thickness and
 durability

The Genuine ALPACUNA OVERCOATS Cannot Be DUPLICATED

Today... dozens of overcoats are being called by some name
 that is made up with "Cuna" or "Alpa" as a part... the in-
 tent is obvious... the difference between ALPACUNA and
 its substitute is decidedly apparent when placed side by side
 ... and like all substitutes... carries only a slight resemblance
 to the genuine... and strange as it may seem... ALPACUNA
 costs NO more than inferior imitations.

There Is Only One
 ALPACUNA Overcoat

• And there is only one price

\$45.

ALPACUNA OVERCOATS

The World's Finest Combination of
 WARMTH, WEAR and LIGHT WEIGHT

It's warm — marvelously warm and silky — ready to
 defy the bitterest sub-zero days. Yet it's light — un-
 usually light and soft — comfortable as a napron. And
 it's sturdy — wonderfully durable — you can wear it
 year in and year out — it never loses its silky luxury
 or its swaying distinctive lines. It's got everything
 you could possibly want in an overcoat — and at
 the price it's the out-and-out sensation of the year.

Laboratory Tests Prove:

28.2% warmer 41% longer wear
 1 1/2 lbs. lighter weight

* Figures by National Research Corporation



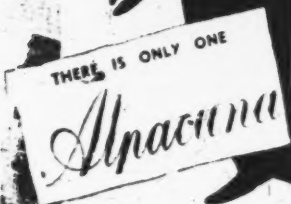
Sold Exclusively by

KAUFMAN'S

18 and 14 Main St.

Champaign

♥ 05.11.2017 **02.12.17 = 8.8**



- Eden, Steve 5-446 Biber

*There is only one Alpacuna
Co. Ex. 19faid*



FEDERAL TRADE COMMISSION
Case No. 10,000
In the Matter of
ALPACUNA OVERCOATS
vs. JACOB LITAN, Inc.
SUPPORTERS: ALPACUNA OVERCOAT CO.
OPPOSERS: JACOB LITAN, Inc.



ALPACUNA OVERCOATS

*The Finest Combination of
Strenuous, Warm and Light Weight
Known to the Clothing World*

It's the greatest step forward in overcoat history.
Fabric is uniquely constructed that it defies the
coldest blast... and at the same time contains the
average overcoat 81%... and is top in all it's 11½
pounds lighter in weight. Not only that, Alpacuna
has a soft, silky texture that satisfies the highest
demands for luxury. Available in warmest new
models and in rich new shades.

\$45

Looks Like Fifty-Five... Exclusive With Us

LITAN Ludlow at Fourth 334
STORES FOR MEN AND BOYS

ARNOLD CONSTABLEFIFTH AVENUE AT 4TH STREET

There is only ONE
**ALPACUNA
 OVERCOAT**

**'45**

- 26.3% warmer
- 61% longer wear
- 1½ lbs. lighter

More weight does not produce warmth in clothing—ungraceful bulk is no indication of longer wear. Avoid these disadvantages! Try on an Alpacuna Overcoat and prove to your own satisfaction the tested facts of its greater warmth, its lighter weight, its extended wear! In appearance this marvelous garment lives up to an enviable reputation for smartness and beauty—in performance it is three times worthy of its wide renown for comfort, efficiency and stamina. The Alpacuna will never "let you down" in service! Handsome single or double-breasted raglan or ulster models—with or without half belt. Second Floor

QUALITY LINED WITH EARL-BLO SUPREME

Exclusive with Arnold Constable

FEDERAL TRADE COMMISSION
 Order No. 3403
 IN THE MATTER OF
 DAY OCT 30 1939
 REGISTRY No. 155
 ETHEL E. FISHER, REGISTRAR

Can 23 for ad

There is only one *Alpacuna*



Exclusive With Us

FEDERAL TRADE COMMISSION
Case No. 3403
In the matter of *Jacot Sirel & Co.*
DATE OCT 20 1936
U.S. DEPT. OF JUSTICE
ETHEL A. FISHBEIN, COMPLAINT, 1936



Saturday... we present a brilliant new showing for
our Pre-Christmas selling of these famous "Miracle"

ALPACUNA OVERCOATS

MAGNIFICENTLY LINED WITH EARL GLO SUPREME

*The Finest Combination of
Warmth, Wear and Light Weight
Known to the Clothing World*

26.3%
WARMER

Then eight fabrics of
equal weight... and 10%
per cent warmer than
fabrics 1 1/2 times heavier.

61% LONGER
WEARING

Then eight other famous
overcoat fabrics... by
actual scientific abrasion
machine tests.

1 1/2 POUNDS
LIGHTER

ALPACUNA weighs 36
ounces per yard. The
accepted overcoatings
weigh 32 ounces.

\$45

Looks
Like
"Sixty"

See them in our windows and in the Home of O'coats... 2nd Floor

LUDLOW
AT FOURTH



Herald 11/26

13640



There is only ONE GENUINE

ALPACUNA

Here's a Statement of Facts . . .
"Cuna" and "Alpa" can be combined
only one way to spell ALPACUNA

A textile genius of the Continental Mills of America after 9 years of scientific laboratory research, perfected an overcoat fabric that is the "wonder of the overcoat world."

This famous mill prized their new development so highly they determined not to permit its greater width, light weight, longer wear and unmatched luxuriousness to get into the hands of manufacturers who were not equipped to do justice to this sensational new overcoat fabric.

A master coat specialist of Philadelphia was entrusted with the task of beautifully hand-tailoring this wonder fabric. It was then christened ALPACUNA.

ALPACUNA was introduced to America little more than a year ago and immediately established a remarkable record of acceptance.

Today . . . dozens of overcoats are being called by some name that is made up with "Cuna" or "Alpa" as a part . . . the intent is obvious.

difference between genuine ALPACUNA and its substitutes is very apparent when placed side by side . . . and, like all substitutes . . . carries only a slight resemblance of the genuine.

ALPACUNA OVERCOATS

The Most Luxurious Overcoats we ever offered at

\$40

Includes with it

Laboratory tests by the Industrial Research Corporation, the country's leading textile engineering firm, scientifically show



ALPACUNA is one
 • 35% warmer
 • 10% longer wearing
 • 10% stronger
 • 10% lighter in weight

See them on display in our window and at the
 Metro of the University. Don't Miss!

METROPOLITAN

LUDLOW AT FOURTH

FIFTH AVENUE AT 40TH STREET • NEW YORK

ABLE
NEW YORK
Comm. Ex. 26 for id

Buy Now—November Charge Purchases Payable in January

a farewell to /overcoat "DRAG" with

"ALPACUNA" OVERCOATS

SCIENCE PROVES ALPACUNA IS

26.3% warmer
61% longer wearing
1½ lbs. lighter

340



Why do so many normally alert citizens look so tired and bedraggled and trouble-bent in winter? It is usually because they're trying to carry around those two-ton overcoats. You put them on in the morning and after you have walked around the streets with them an hour or two you feel like Atlas with the weight of the world on your shoulders.

Alpaca Overcoat with wide open arms.
The Alpaca goat, because of the degree of snug warmth
it in weight. This counts for the fact that
it is one of the warmest coats in the world and yet
shoulders that you hardly know you have it on. It is
available in a variety of extremely flattering models.
We consider it an investment at \$40.

Advertisement for Kann's Men's Store, featuring a list of clothing items and prices. The text is small and partially illegible due to the quality of the scan.

Kann's

MEN'S STORE

Kann's

MEN'S STORE

for
Inauguration
and President's
Birthday Parties

Full Dress
Suits
\$35



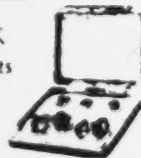
Midnight
Blue
Tuxedos
\$25

Patterned Broadcloth Tuxedo \$3.95
Black Broadcloth Tuxedo \$5.00

Dress Shirts



SWANK
Dress Sets
\$2.00



Black Broadcloth Tuxedo \$3.95
Black Broadcloth Tuxedo \$5.00
Black Broadcloth Tuxedo \$5.00
Black Broadcloth Tuxedo \$5.00
Black Broadcloth Tuxedo \$5.00
Black Broadcloth Tuxedo \$5.00
Black Broadcloth Tuxedo \$5.00
Black Broadcloth Tuxedo \$5.00



ALPACUNA OVERCOATS

WARMTH
WEAR and
LIGHTER
WEIGHT

\$40

Alpacuna overcoats are noted for and wide for their warmth, superior quality, unique fabric construction and thoroughbred styling. You can wear them year in and year out and they never lose their silky luster or their distinctive swagger lines. In short, they have everything you could possibly want in an overcoat and at the standard price of \$40 they're the out and out overcoat investment of the year.

Four Ways to Pay

1. Pay cash. Purchase with cash.
2. Lay away Plan. Pay 50% down and balance later.
3. Budget Plan. Pay 10% down and balance in 12 monthly payments.
4. Charge to American Express, Visa, MasterCard.

Commission's Exhibit

No. 31

PLATE 26

Handwritten: Pays Dividend
Can Ex 31 forced

Stamp: TRADE COMMISSION
JAN 30 1933
RECEIVED
FEDERAL BUREAU OF INVESTIGATION
DETROIT



**For Rugged
Individualism!**

THE GENUINE

**ALPACUNA
OVERCOAT**

\$40

The Alpacuna is truly a miracle overcoat. It's warm—marvelously warm and silky—ready to defy the bitterest cold at a football game or your howlingest corner. Yet it's light—comfortable as a topcoat. And its durability is short of being miraculous. The Alpacuna never loses its silky luxury or its swaggering distinctive lines. Demand the REAL THING—the GENUINE ALPACUNA and in Detroit it is only sold at Harry Suffrin's.

CHARGE ACCOUNTS
INVITED

Harry Suffrin

1133 SHELBY ST. at STATE
OPEN EVENINGS TILL 9 O'CLOCK

Open Today
Until 6

Can Ex-34 for it

only at **GIMBELS**
can you buy Men's

ALPACUNA OVERCOATS

\$40

Over-anxious salesmen elsewhere may insist, "Here's something just as good," or, "This coat is identical." But it never is. There's just **ONE Alpacuna!** Its fabric is a marvelous blend of fleeces from the alpacas, guanaco, angora and Texas Panhandle sheep. Tests by Gimbels Bureau of Standards prove Alpacuna:

26.3% Warmer
than 8 fabrics of equal weight!

1 1/2 Lbs. Lighter
than average 32-oz fabric; Alpacuna only 26-ounce!

61% More Wear
... proven by abrasive tests on 6 famous overcoat fabrics!

\$10 Delivers

Satisfactory references and this small payment deliver your Alpacuna. Balance in 10 weekly payments of 33¢—which include 25¢ total carrying charge.



FEDERAL TRADE COMMISSION
Order No. 3403
IN THE MATTER OF
JACOB LIGEL CO.
DATED OCT. 29, 1939
REPUTATION
ETHEL E. FISHER & ASSOCIATES, INC.

GIMBELS

Com. Ex. 36 for id

ALPACUNA



The most
**LUXURIOUS
OVERCOAT**
we ever offered
at

\$40

EXCLUSIVE WITH US

Laboratory tests by the Industrial Research Corporation, the country's leading textile engineers, prove scientifically that Alpacuna is 26.3 per cent warmer, 61 per cent longer wearing, 1 1/2 pounds lighter in weight. Alpacuna Overcoats are warm, they're sturdy, wonderfully durable, you can wear them year in and year out, yet they never lose their silky luster. Available in the smartest new models. Rich shades of Beaver Brown, Carbon Gray, Dignified Oxfords, Midnight Blue and Jet Black.

See them on display in our window and in the Home of the Overcoat . . . 2nd Floor

METROPOLITAN

LUDLOW AT FOURTH

140

FASHION PARK CLOTHES . . DOBBS HATS . . ARROW SHIRTS . . BOSTONIAN SHOES

There is only one Alpacuna



ALPACUNA OVERCOATS

the greatest combination
of warmth, wear
and light weight
known to the
clothing
world.

"CELANESE LINED"
TRADE MARKED U. S. PAT. OFF.

- 26.3% warmer
- 61% longer wear
- 1½lb. lighter weight

\$40

● Figures by Industrial Research Corporation

BUY HIM A Certificate For An ALPACUNA Overcoat . . . No Better
Present Can You Give Any Man.

HARRY ISRAEL

GOOD CLOTHES

20 PRATT STREET 29

OPEN EVERY EVENING UNTIL CHRISTMAS

DATE OCT 20 1939
IN THE MATTER OF
Estate of
JACOB ANGEL
JACOB ANGEL
HARRY ISRAEL
ETHEL E. ISRAEL & ASSOCIATES, INC.

133



this picture gives
you an idea why

ALPA CUNA OVERCOATS

represent the greatest combination of
warmth, wear and light weight
known to the clothing world

FEDERAL TRADE COMMISSION

No. 3408

EXHIBIT No. 42

MADE IN
U.S.A.

WOMEN

IMPORTER

J. FISHER & ASSOCIATES, INC.

40

C#

42

The alpaca is a packing animal used extensively in South America. On its weary trekkings in the Andes mountains it encounters temperatures ranging from over 100° at noontime to 'way under freezing at night. Nature has given the hair of these animals properties that protect it against cold as well as heat—and that's why these Alpacuna coats, which are made from the light hairs of the alpaca, combine such amazing warmth with such amazing light weight.

"CELANESE LINED"
TRADE MARK REG. U. S. PAT. OFF.

LABORATORY TESTS PROVE:

- *26.3% warmer
- *61% longer wear
- *1½ lb. lighter weight

*Figures by Industrial Research Corporation

Gimbel Mallory Hats

\$4

For style . . . for quality . . . for economy.
when you're buying your new fall hat,
choose a Mallory from Gimbels smart se-
lection. You'll like the jaunty smart
brim so popular this season, and you'll
be sure to find your favorite fall color.

GIMBELS—MEN'S CLOTHING—THIRD FLOOR.



GIMBELS

ONE OF AMERICA'S BEAUTIFUL STORES

ALPACUNA OVERCOATS

\$40

"CELANESE LINED"
 THESE LINED TUBS ARE 1 1/2 FEET DEEP

Silberberg's

MCLEAN'S MEN'S STORE

DIRECT ENTRANCE

5 CHENANGO STREET

There is only one Alpacuna



ALPACUNA OVERCOATS

the greatest combination
of warmth, wear
and light weight
known to the
clothing
world.

"CELANESE LINED"

REGISTERED U.S. PAT. OFF.

- 26.3% warmer
- 61% longer wear
- 1½lb. lighter weight

\$40

• Figures by Industrial Research Corporation

Only at McLean's in Binghamton

McLean's Men's Store—Second Floor.

FEDERAL TRADE COMMISSION
No. 50
Docket #B403
IN THE MATTER OF
JACOB & LEVY CO.
DATE: OCT 30 1939
FILED
JACOB & LEVY CO.
NEW YORK, N.Y.

B & B Clothes Shop

Outlines

A Day with ALPACUNA the Wonder OVERCOAT



9.00 A. M.

You're on your way for an appointment and you walk along briskly. It's freezing weather. You're wearing your ALPACUNA overcoat and you're as snug as a bug in a rug. (ALPACUNA is 28.3% warmer, you know.)



9.30 A. M.

Gorgeous dame passes you and gives you the eye. She says to herself: "That guy must be a millionaire with that marvelous looking coat on." (ALPACUNA does make you look like a million dollars.)



11.00 A. M.

You've been poundin' the pavements for 2 hours. Does that amazingly warm ALPACUNA drag you down like most overcoats? Not on your Aunt Tilly! (Remember, ALPACUNA is 1½ pounds lighter in weight.)



3.00 P. M.

Gets warm suddenly. You know—that fluky weather. Do you get all sweated up with ALPACUNA on? No! ALPACUNA is as light as a deb's conversation! (And yet — this same ALPACUNA is 61% longer wearing.)



THE ALPACUNA fabric from which these superb coats are tailored is woven from the soft, long silken hairs of the South American Alpaca ... the Turkish Angora ... and the Peruvian Guanaco. ... It is this special fibre content which gives these coats their astonishing virtues in freezing weather ... their lustrous silky luxury ... their lightness with amazing warmth ... and their remarkable resistance to wear.

\$40

There is **NO** Increase in the Price of Alpacuna

Developed in raglan and ulster models that faithfully reflect Fifth Avenue custom styling. With half belts and belts all around ... single and double breasted ... and great coats that look like a million dollars.

**MAGNIFICENTLY LINED
WITH CELANESE SATIN**

Charge Accounts Invited

B & B Clothes Shop

164-08 Jamaica Avenue

Jamaica's Finest Clothing Store

There is only one Alpacuna



this picture gives
you an idea why

ALPACUNA OVERCOATS

represent the greatest combination of
warmth, wear and light weight
known to the clothing world

\$40.

From the South American Andes come the warm, light, silky hairs of the Alpaca. From the valleys of old Peru come the lustrous coat of the Guanaco. From the plains of Turkestan come the sturdy, durable hair of the Angora. From the Texas Panhandle come the thickest, warmest and richest sheep's wool. Put them all together in scientific proportions and you have Alpacuna—a fabric that has no peer for luxury, warmth, light weight and long wear. The Alpacuna overcoat, masterfully tailored—all sizes—all colors—unlimited styles—magnificently fully lined with Celanese satin—truly a miracle value. Sold in Detroit only at Harry Suffrin's.

Charge Accounts Invited

Harry Suffrin

1133 SHELBY ST. . . . AT STATE

9 o'Clock

a day with
ALPACUNA
The Wonder Overcoat

\$40

FEDERAL TRADE COMMISSION
Bulet No. 8405 ~~EXHIBIT~~ **65**
IN THE MATTER OF *Jacob A. Singer Co.*
DATE OCT 30 1939
REPORTER *...*
WILLIAM A. FISHER *...*

There is NO increase
in the price of Alpacuna



6.00 A. M.

You're on your way for an appointment
and you wish along briskly. It's freezing
weather. You're wearing your
ALPACUNA overcoat and you're as
dry as a bone in a rug. (ALPACUNA
is 25.75 warmer, you know.)



9.00 A. M.

Compare those pants you and give
you the r. o. the eyes to know. "That
guy must be a millionnaire with that
carriage looking out on." (ALPACUNA
dresses you look like a million dollars.)



11.00 A. M.

You're late standing the pavement
for 2 hours. Don't that amazingly warm
ALPACUNA keep you down like most
overcoats? But on your Aunt Tilly's
number. ALPACUNA is 1/4 pound
lighter in weight!



2.00 P. M.

One more sentence. You know that
fuzzy weather. Do you get all covered
up with ALPACUNA? For ALPACUNA
keeps you warm and dry and comfortable
that yet - the one ALPACUNA is
25.75 warmer!

THE ALPACUNA fabric from which these superb
coats are tailored is woven from the soft, long
staple hairs of the South American Alpaca ...
the Turkish Angora ... and the Peruvian Guanaco ... It is this special fibre content which
gives these coats their astonishing virtues in
freezing weather ... their lustrous silky luxury
... their lightness with amazing warmth ...
and their remarkable resistance to wear.

ALPACUNA overcoats are beautifully
hand tailored throughout ... by master
craftsmen who tailor nothing but
ALPACUNA coats the year around.

Developed in rayon and ultra models
that faithfully reflect Fifth Avenue cus-
tom styling ... single and double
breasted ... great coats that look like
a million dollars.

**MAGNIFICENTLY LINED
WITH CELANESE SATIN**

Exclusively sold by The Industrial By-Products
and Research Corporation, the country's leading
textile engineers.

The Modern

LANG'S

187 - 189 South Main Street

AKRON'S FINEST STORE FOR MEN — SATISFACTION SINCE 1905

500

There is only ONE

The World's Finest Combination of
**WARMTH, WEAR
AND LIGHT WEIGHT**

FROM THE South American

Andes we took the warm, light silky hairs of the Alpaca. From the valleys of old Peru we took the fine lustrous coat of the Guanaco. From the plains of Turkestan we took the sturdy, durable hairs of the Angora. From the Texas Panhandle we chose the thickest, warmest, and richest sheep's wool. They were all brought together and scientifically blended into a fabric that's unmatched for richness, luxury, warmth, light weight, long wear.

MAGNIFICENTLY LINED WITH EARL-GLO SUPREME

Alpaga O'coats \$34.50

148

The Manhattan Clo. Co.

**26.3% WARMER
61% LONGER WEAR
1½ lbs. LIGHTER WEIGHT**



● ALPACUNA overcoats are beautifully hand-tailored throughout . . . by master craftsmen who tailor nothing but ALPACUNA coats the year around. Developed in raglan and slater models that faithfully reflect Fifth Avenue custom styling. With half bells and bells all around . . . single and double-breasted . . . and great coats that look like a million dollars.

FEDERAL TRADE COMMISSION
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IN THE OFFICE OF
THE ATTORNEY GENERAL
WASHINGTON, D. C.
OCTOBER 1936
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37

THERE IS
ONLY ONE
ALPACUNA

OVERCOAT

FEDERAL TRADE COMMISSION

\$45

THE MATTER OF

LOOKS LIKE
SIXTY-FIVE

REPORTED BY ASSOCIATE



26.3%

WARMER

than eight fabrics of
equal weight—and
16.6% warmer than fab-
rics 1 1/2 times heavier

1 1/2 POUNDS

LIGHTER

ALPACUNA weighs 26
ounces per yard. The
average overcoat
weighs 32 ounces.

61% LONGER

WEARING

than eight other famous
overcoats fabrics—by
actual scientific abso-
lute machine tests.

From the South American Andes we took the warm, light silky
hairs of the Alpaca. From the valleys of old Peru we took the
fine lustrous coat of the Guanaco. From the plains of Turkestan
we took the sturdy durable hairs of the Angora. From the Tross
Peninsula we chose the thickest, warmest, and richest sheep's
wool. They were all brought together and scientifically blended
into a fabric that's unmatched for richness, luxury, warmth,
light weight, long wear. Looks like sixty-five.

ALPACUNA overcoats are beautifully hand tailored through-
out. Designed to replace and other models. With half
bells and half all around . . . single and double breasted.

MAGNIFICENTLY LINED WITH EARL-GLO SUPREME

SEE OUR WINDOW DISPLAY

HARRY ISRAEL

Good Clothes

The Most Imitated Overcoat in America!

QUESTIONS AND ANSWERS

FEDERAL TRADE COMMISSION

In RE: ALPACUNA OVERCOATS

MADE BY

ALPACUNA OVERCOATS

REASONABLY MAINTAINED PRICE THE YEAR AROUND

\$45 C

AND 10000
AND 10000

Exclusively
At
Oppenheim's

THE MARK OF
THEY CAN
BEAT IT



Ques. What is ALPACUNA?

Ans. Alpacuna fabric is made from the rare foreign hairs and wool of the Alpaca, Angora, Guernsey and Tonne Sheep.

Ques. Is this an unusual combination?

Ans. Yes, this combination of hair and wool is the result of 8 years of scientific laboratory research work by a textile genius.

Ques. What advantages does this unusual fabric give the wearer?

Ans. Four advantages, not found in any other overcoat. Greater warmth — lighter weight — longer wear — and unmatched handiness.

Ques. Can you prove these statements?

Ans. Absolutely — modern science proves them as **FACTS**.

Wool made of the Alpaca fabric by America's leading textile engineers — The Industrial By-Products & Research Corporation of Philadelphia.

26.3%

WARMER

than eight fabrics of equal weight — and 10.0% warmer than fabric 14 times heavier.

14 POUNDS

LIGHTER

ALPACUNA weighs 34 ounces per yard. The average overcoats weigh 32 ounces.

61% LONGER

WEARING

than eight other famous overcoat fabrics — by actual scientific chemical analysis tests.

Today... dozens of overcoats are being called by some name that is made up with "Cuna" or "Alpa" as a part... the intent is obvious... the difference between genuine ALPACUNA and its substitute is doubtfully apparent when placed side by side... and like all substitutes... carries only a slight resemblance to the genuine... and strange as it may seem... ALPACUNA costs NO more than inferior imitations...

ALPACUNA overcoats are beautifully hand tailored throughout. Developed in regular and extra models. With half hats and hats all around... single and double breasted.

HANDWICHTLY LINED WITH EARL-GLO SUEDINE

Extended Charge Account Service

Oppenheim's

Store at Washington

8

FEDERAL TRADE COMMISSION


Exhibit No.

151

38

ALPACUNA OVERCOATS ARE HANDMADE IN AMERICA

Alpacuna



Alpacuna \$45
Nationally Guaranteed
Fines the Year Round

OVERCOATS

The World's Finest Combination of
WARMTH, WEAR and LIGHT WEIGHT

It's warm — marvelously warm and silky — ready to defy the bitterest sub-zero days. Yet it's light — amazingly light and soft — comfortable as a topcoat. And it's sturdy — wonderfully durable — you can wear it year in and year out — it never loses its silky luxury or its evergreen distinctive lines. It's got everything you could possibly want in an overcoat — and at this price it's the out-and-out bargain of the year.

Interesting Facts from:
"25% warmer" "45% longer wear"
"1 1/2 lbs. lighter weight"
* Figures by National Research Corporation

ALPACUNA overcoats are beautifully hand-colored throughout. Developed in custom and ultra models. With half belts and belts all around . . . single and double breasted.

MAGNIFICENTLY LINED WITH EARL-OLD SUPREME

Matt Schmidt & Son
HATTERS — CLOTHIERS
108 E. College Ave. 152

*not legal for
magical*

There is only one Alpacuna

LOOK FOR
THIS LABEL



IT IDENTIFIES
GENUINE ALPACUNA

ALPACUNA OVERCOATS

*The Finest Combination of
Warmth, Wear and Light Weight
Known to the Clothing World*

To-day . . . dozens of overcoats are being called by some name that's made up with "Came" or "Alpa" as a part . . . the intent is obvious . . . the difference between genuine ALPACUNA and its substitute is decidedly apparent when placed side by side . . . and like all substitutes . . . carries only a slight resemblance to the genuine . . . and strange as it may seem . . . ALPACUNA costs NO more than inferior imitations . . .

26.3% WARMER 61% LONGER WEAR

2 1/2 Lb. LIGHTER WEIGHT

Proven by Industrial Research Corporation

45 Looks Like
Suits You

150

61 MAINTAINMENT LINED WITH ENGL-GLO SUPREME

40

W. H. WOOLLEY

181 Broadway

Long Branch, N. J.

EXHIBIT 31
Jacob Siegel Co.
Modjeska
EXHIBIT 31



NATIONALLY MAINTAINED
PRICE THE YEAR ROUND

The World's Finest Combination
WARMTH, WEAR AND LIGHT WEIGHT

LABORATORY TESTS by the Industrial Research Corp., the country's leading textile engineers, prove scientifically that ALPACUNA is 26.3% **WARMER** ... 61% **LONGER WEARING** ... yet 1½ pounds lighter in weight ... ALPACUNA overcoats are warm, marvelously warm, and silky. Yet they are amazingly light, amazingly light and soft, comfortable as a topcoat. And they are sturdy, wonderfully durable, you can wear them year in and year out, they never lose their silky luster or their swaggering distinctive lines. They **HAVE EVERYTHING** you could possibly want in an overcoat and at this price ALPACUNA is the cut-and-out overcoat sensation of the year.

MAGNIFICENTLY LINED WITH EARL-GLO SUPREME
ALPACUNA overcoats are beautifully hand-tailored throughout. Developed in rayon and alpaca models. With half belts and belts all around ... angle and double-breasted.



LOOK FOR THE LABEL
OF GEMBELS CLOTHING
ALPACUNA

154
GEMBELS



ALPACUNA OVERCOATS

*The Finest Combination of
Whitcomb, Wheat and Light Weight
Natives in the Chaffing World*

90.9%	24 POWER	80% POWER
WARRIOR	LIGHTS	WARRIOR
THE NEW YORK	THE NEW YORK	THE NEW YORK
STATE	STATE	STATE

From the South American Andes we took the warm, light colors of the Alpaca. From the valleys of India we took the fine texture of the Chacoan. From the plains of Nebraska we took the heavily fringed texture of the Sioux. From the Texas Panhandle we chose the richest, warmest, and richest dye to take their warm, all brought together and carefully blended. These were chosen from amongst the softest, lightest, warmest, light weight, long wear. Look! like cotton.

ALLSOUTH processes our beautiful hand-colored through
out. Developed to replace and other models. 1980 and
late and late all around . . . High and dark forest.

\$45 AND LOOKS
LIKE SHE'S JIVE

MAJESTICALLY LINED WITH EARL-GLO SUPREMACY

FISHER

IN THE MATTER OF First Pacific
 DEBT OR VOUCHER —
 IMPORTED Medicine
 — WILLIAM K. FARRER & ASSOCIATES, INC.

157

42

25

OAKFIELD N.Y. INDEPENDENT
THURS NOV 11 1937 WEEKLY

ALPACUNA

A day with the
Wonder
OVERCOAT



8.00 A. M.

You're on your way for an appointment and you walk along briskly. It's heading weather. You're wearing your ALPACUNA overcoat and you're as snug as a bug in a rug. (ALPACUNA is 28.5% warmer, you know.)



9.30 A. M.

Curious glances pass you and give you the eye. She says to herself: "That guy must be a millionaire with that marvelous looking coat on." (ALPACUNA does make you look like a million dollars.)



11.00 A. M.

You've been pounding the pavements for 2 hours. Does that amazingly warm ALPACUNA drag you down like most overcoats? Not on you. Aunt Tilly! (Remember ALPACUNA is 1 1/2 pounds lighter in weight.)



3.00 P. M.

Get warm suddenly. You know—that sultry weather. Do you get all sweated up with ALPACUNA on? No. ALPACUNA is as light as a deb's conversation! (And yet—the same ALPACUNA is 61% longer wearing.)



THE ALPACUNA fabric from which these superb coats are tailored is woven from the soft, long silken hairs of the South American Alpaca... the Turkish Angora... and the Peruvian Guanaco... It is this special three-content which gives these coats their astonishing virtues in freezing weather... their luxurious silky luxury... their lightness with amazing warmth... and their remarkable resistance to wear.

\$45 Looks Like Sixty-Five

Developed in region and color models that faithfully reflect Fifth Avenue custom styling. With half belts and belts all around... single and double breasted... and great coats that look like a million dollars.

MAGNIFICENTLY LINED
WITH EARL-GLO SUPREME

McAlpine, Brumsted
AND COMPANY
THE CLOTHIERS

Massachusetts Temple Bldg. Boston

COMPEITION CROGS KEEPS OUR BUSINESS CROGS LARGER

a day with
ALPACUNA
The Wonder Overcoat

\$45 AND LONGER
LIKE FIFTY-FIVE

Nationally maintained
price the year round



8:30 A. M.

You're on your way for an appointment and you walk along happily. It's breezy weather. You're wearing your ALPACUNA overcoat and you're as cozy as a bug in a rug. (ALPACUNA is 36.75 warm, you know.)



9:30 A. M.

Someone says pass you and gives you the o. c. She says to himself: "That guy must be a millionaire with that Star-Valued looking coat on." (ALPACUNA is 36.75 warm, you know.)



11:30 A. M.

You've been providing the pavement for 2 hours. When that suddenly warm ALPACUNA dog you drove has most overcoat? Not a word! Just Tilly! (Remember, ALPACUNA is 36.75 warm, lighter in weight.)

THE ALPACUNA is a dog from which these experts make are inferior to those from the old, long since born of the South American Alpaca... the Turkish Angora... and the Persian Chino... It is the special fiber content which gives these coats their outstanding virtues in freezing weather... their luxurious silky luxury... their lightness with amazing warmth... and their remarkable resistance to wear.

ALPACUNA overcoats are beautifully hand tailored throughout... by master craftsmen who tailor nothing but ALPACUNA coats the year around.

FEDERAL TRADE COMMISSION

of the U. S. DEPARTMENT OF COMMERCE

THE MATTER OF



REPORTER

BYRON E. FARRAR, ASSOCIATES, INC.

One warm suddenly. You know—that rainy weather. Do you get all covered up with ALPACUNA on? Not ALPACUNA as high as a dog's overcoat (and yet — the same ALPACUNA is 36.75 warm, lighter.)

Developed in region and other models that faithfully reflect Fifth Avenue custom styling. With half bolts and bolts all around... single and double breasted... and great coats that look like a million dollars.

MAGNIFICENTLY LINED
WITH KARL-GLO SUPREME

Laboratory test by The Industrial By-Products and Research Corporation, the country's leading textile engineers.

LANG'S

187-189 SOUTH MAIN STREET

AKRON'S FINEST STORE FOR MEN - SATISFACTION SINCE 1900

163

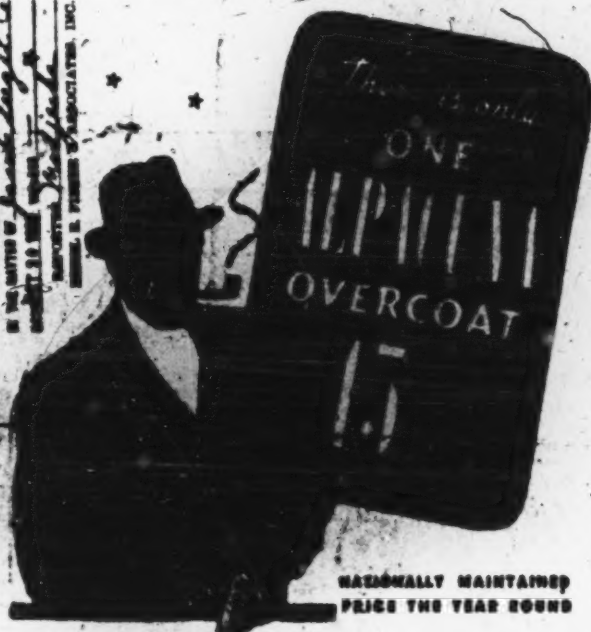
IMITATION IS AN ADMISSION OF SUPERIORITY! 72

Nine years ago a new fabric made its appearance on the market. The combination of materials used in its manufacture was so radically different—the process of weaving so far removed from the ordinary—that before offering it to the public, the manufacturers of this revolutionary fabric had put it to many months of earnest test. At last satisfied with its beauty, its warmth, its light weight, its wear-resisting and rain-repellent qualities, the manufacturers dubbed it ALPACUNA, and overcoats bearing this label appeared in the leading stores of the United States.

The success of these coats was spontaneous—the demand was far beyond possible means of production.

Today, practically every large manufacturer of overcoats in the world is striving to imitate the ALPACUNA process. Year after year ALPACUNA has improved its methods—till today—with a still finer cloth, more expensive linings, more perfect fitting garments, ALPACUNA stands head and shoulders above all imitations.

FEDERAL TRADE COMMISSION
IN THE MATTER OF JAMES L. LARKEY, JR.
ALPACUNA OVERCOATS
JAMES L. LARKEY, JR., INC.



NATIONALLY MAINTAINED
PRICE THE YEAR ROUND

The World's Finest Combination of WARMTH, WEAR AND LIGHT WEIGHT

LABORATORY TESTS by the Industrial Research Corp., the country's leading textile engineers, prove scientifically that ALPACUNA is 36.3% **WARMER** ... 61% **LONGER WEARING** ... yet 1½ pounds lighter in weight ... ALPACUNA overcoats are warm, marvelously warm, and silky. Yet they are amazingly light, amazingly light and soft, comfortable as a tapestry. And they are sturdy, wonderfully durable, you can wear them year in and year out, they never lose their silky luster or their swagging distinctive lines. They **HAVE EVERYTHING** you could possibly want in an overcoat and at this price ALPACUNA is the cut-and-out overcoat sensation of the year.

MAGNIFICENTLY LINED WITH EARL-GLO SUPREME
ALPACUNA overcoats are beautifully hand-colored throughout. Developed in rayon and other models. With half belts and belts all around ... single and double-breasted.

USE OUR SUGGEST PLAN AT NO EXTRA CHARGE!

OPEN EVENINGS TILL 9

SATURDAY TILL 10 P. M.

CLOSED WEDNESDAYS AT 2 P. M.

LARKEY

18-20 Lexington Avenue

Pasadena

STORES IN NEW YORK • PITTSBURGH • ELIZABETH

164

Today... dozens of overcoats are being called by some name that is made up with "Guns" or "Alps" as a part... the intent is obvious... the difference between genuine ALPACUNA and its substitute is readily apparent when placed side by side... and the all subtle... takes... carries only a slight resemblance to the genuine... and strange as it may seem... ALPACUNA costs NO more than inferior substitutes.



LOOK FOR THIS LABEL
ON GENUINE GIMBELS
ALPACUNA



FEDERAL TRADE COMMISSION
Order No. 8408
IN THE MATTER OF
DATE OCT 30 1939
REPLY TO: *James Hughes*
ETHEL E. FRANKLIN & ASSOCIATES

ALPACUNA OVERCOATS

The World's Finest Combination of

WARMTH, WEAR and LIGHTWEIGHT

Laboratory tests by the Industrial Research Corp., the country's leading textile engineers, prove scientifically that ALPACUNA is 26.3% WARMER... 61% LONGER WEARING... yet 34 pounds lighter in weight... ALPACUNA overcoats are warm, marvelously warm, and silky. Yet they are amazingly light, amazingly light and soft, comfortable as a topcoat. And they are sturdy, wonderfully durable, you can wear them year in and year out, they never lose their silky luster or their swagging distinctive lines. They HAVE EVERYTHING you could possibly want in an overcoat and at this price ALPACUNA is the out-and-out, overcoat sensation of the year.

MAGNIFICENTLY LINED WITH CELLULOSE SATIN

EXCLUSIVE AT GIMBELS

\$40

P.S. If you are in doubt about the value of the "Gimbel's" label, ask your dealer and you will be able to tell at a glance.

Men's Shop—Third Floor.

GIMBELS

ARNOLD CONSTABLE

FIFTH AVENUE AT 40TH • NORTH AVE, NEW ROCHELLE

Alpacuna

TOPCOATS

- LUXURIOUS
- LONG WEARING
- RAIN RESISTING
- OURS EXCLUSIVELY

\$35



MISSION

26

Leige

mer

ha

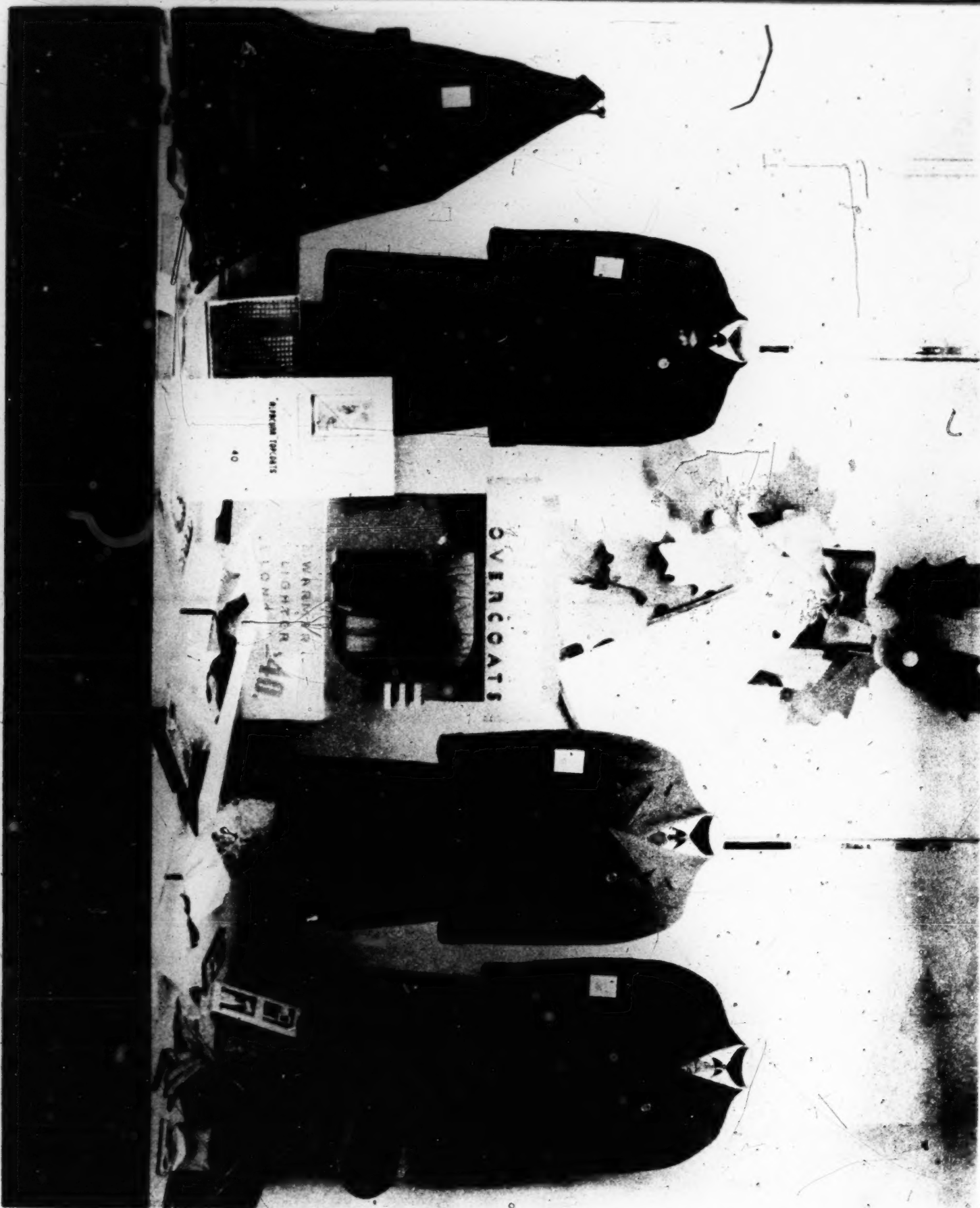
CIATES, IN

Come in and FEEL of this luxurious fabric! Light as a snow flurry, yet gratefully warm in a Fall wind—and delightfully dry in a drizzle. Wrinkle-proof, too—another great advantage to permanent smart appearance. The Alpacuna truly is a masterpiece of weaving art. Our famous fleeces scientifically blended to give you topcoat perfection! Raglan or set-in shoulders—single or double-breasted. In oxfords, smart new shades of green, sparkling grays and aristocratic camel tones. \$35—and looks like FIFTY.

SECOND FLOOR • ALSO NEW ROCHELLE

168

Commission's Exhibit
No. 77
(Front)
PLATE 48



Produced by the
Court in Case No. 7
in the Matter of *Dugan v.*
DATE *2-2-39* WITNESS
RECORDED *in* INDEXED
FILED

*Photograph of Kanno beneath St. Andrew's Bridge
made December 1, 1939*

*Edw. A. Johnson
Federal Trade Commission Photographer*

Commission's Exhibit
No. 77
(Back)
PLATE 49

35.

ALPA CUNA OVERCOATS



263

Pa.

61%

40.

COATS

0.

Commission's Exhibit
No. 78
(Back)

PLATE 51

Photograph of Mann's Eleventh St. Window Display
made December 1, 1939

Fred. C. Schuman
Federal Trade Commission Photographer

DATE 12-1-39
BY F. C. SCHUMAN
RECEIVED BY J. H. HARRIS
FBI - WASH.

21

Commission's Exhibit
No. 79
(Front)
PLATE 52



35.
L. A. C. 100-007

*Photograph of Kinnis Llewellyn St. Pauline Dispensary
made December 1, 1939*

*Edward A. Altman
Federal Trade Commission Photographer*

Commissioner's Exhibit
No. 79
(Back)
PLATE 53

RECORDED
INDEXED
DATE 12/1/39 BY 100-100000
IN THE MATTER OF
Kinnis Llewellyn St. Pauline Dispensary
Decide: 10-1-39

~~174~~

FORM R-12

RADIO AND PERIODICAL DIVISION
PUBLISHED ADVERTISEMENTS

M. J. M.
(Examiner)

1-7-37
(Pre. Rev. Date)

The Hartford Times
(Publication Name)

(Examiner)

(Pre. Rev. Date)

46
(Date of Issue)

G. Fox & Co
(Name of Advertiser)

8
(Page No.)

"Alpacuna"

There is only one genuine
ALPACUNA Topcoat



FEDERAL TRADE COMMISSION
JUL 19 1937
REGISTERED TRADE MARK
\$35
J. H. K. H. K. H. K.

We say only one because Fox's doubts that you will find anywhere a topcoat near the price that will give you so much out and out pleasure. It is light in weight; it is luxuriously warm; it is correctly cut, correctly styled . . . and the deep richness of its silken soft finish is really rare at \$35.00. You will certainly be interested to learn that Alpacunas are made by men who make no other coats—in other words by Alpacuna specialists. No wonder then that they take hard knocks gracefully, and that they come in models and shades which men admire and enjoy wearing. Sizes 34 to 46.

- Regulars
- Shorts
- Tails

475

WORLD'S FIRST LIGHTWEIGHT

TRIMBLE

Union Made Hats
\$3.95 to \$5.00

HATS—NORTH BALCONY

NEW GATERS—MORRIS RAIN

53

CONSUMER APPRECIATION
of the
INHERENT QUALITIES OF

OVERCOATS

Alpacuna

REG. U. S. PAT. OFF.

TOPCOATS

FILED IN THE COMMISSION
Serial No. 3403
IN THE MATTER OF *Alpacuna Co.*
DATE *11/16/39* WITNESSES
REPORTER *J. K. Kintzinger*
FBI

Has resulted in
the largest volume
in our history

IT IS SIGNIFICANT

that the initial introduction of ALPACUNA coats
years ago — with its original component features
— has finally culminated into a definite stability and
consumer stimulation long needed nationally in the
entire overcoat and topcoat fields.

There is only ONE ALPACUNA
America's Largest Selling Coat

JACOB SIEGEL COMPANY

"The Overcoat House"

317 N BROAD ST. PHILADELPHIA

Mason City

Liegel Co.

Alpacuna. That's a great name for you men to remember in connection with Overcoats. Spelled A-L-P-A-C-U-N-A. There is only one Alpacuna overcoat. In Mason City You'll find them only at Gildners. Alpacuna fabric is a miracle of nature duplicated by a miracle of science. The result is a fabric that is 61% longer wearing; 26% warmer, and one and one-half pounds lighter. Alpacuna overcoats will amaze you with their weightless warmth together with their silky soft luxurious feel. Alpacunas are beautifully tailored in extremely flattering models of beautiful masculine shades. A great overcoat investment for \$40.00. Get your Alpacuna overcoat today at Gildners, on Federal opposite the park in Mason City.

EXHIBIT
Docket No. 3403
IN THE MATTER OF Liegel Co.
DATE 12/18/39 WITNESS Pale
REPORTER Fisher
FISHER

KGLO - Mason City, Iowa

Saturday - October 28

For Spring and Easter!

We don't know of anything that will give you such a lift as one of these stylish, luxurious, and at the same time, sturdy and serviceable Topcoats. It's a scientific triumph, the result of blending four famous fleeces. That's the

ALPACUNA



ALPACUNA TOPCOATS

are sold only at Kamm's
Men's Store in Washington!

\$38.50

You never saw a coat you were sure to like so well—you certainly never got a more amazing buy. A revolution in luxury and durability, it's rain-repelling, too—light and wonderfully comfortable. Raglan set-in shoulders, full-length, cuffs, collar, cuffs, waist, cuffs, cuffs.

Kamm's

MEN'S STORE

GIMBELS MEN'S STORE



**Philadelphia's
Unsurpassed**

**Combination of
Respective Prices**

PARKLEIGH SUITS \$30

(EXTRA TROUSERS, 50)

EXCLUSIVE WITH GIMBELS

We're telling you frankly we don't believe that, for \$26, you can buy a better suit anywhere. Thousands of men of good, sound business judgment have found this out already, and more men are discovering this fact every day. We've sold more Parkleighs in the past two months than in any other corresponding period in the twelve-year history of Parkleigh, Jaxon Road.

ALPACUNA OVERCOATS \$40

EXCLUSIVE WITH GIMBELS

Don't go to \$1! Match this marvelous overcoat value if you can. Alpacuna is 50.5% warmer, is 1 1/4 pounds lighter and gives 61% longer wear because this fab-wo automatically dupliates the natural coat of the animals from which hairs and wools are taken. Rayon lined.

Exclusive Clipper-Craft Topcoat \$35
Exclusive Clipper-Craft Zipper Coat \$35

Convenient Credit Terms with a Gimbel Credit Card
November Stamp Purchase Payable in January

GIMBELS Men's Store—Second Floor

*Evening Bulletin
11-17-20 Philadelphia*

Harry Suffrin Announces this Unusual Opportunity For One Week Only

ALPACUNA
OVERCOATS

Made to your
measure

\$40



ALPACUNA
TOPCOATS

Made to your
measure

\$35

GENUINE ALPACUNA TOPCOATS & OVERCOATS MADE TO YOUR MEASURE

AT NO EXTRA COST

ENJOY WEARING A LUXURIOUS ALPACUNA COAT TAILORED TO YOUR SPECIFICATIONS—MADE FOR YOU—AND YOU ALONE. SELECT FROM 36 BEAUTIFUL NEW ALPACUNA FALL AND WINTER SHADES THIS WEEK AND WE WILL TAILOR IT TO YOUR INDIVIDUAL MEASUREMENTS AT NO EXTRA COST! IF YOU ARE ABOVE OR BELOW AVERAGE HEIGHT OR WEIGHT OR IF YOU HAVE YOUR OWN IDEAS ON THE LENGTH OR FULLNESS OR MODEL A COAT SHOULD BE FOR YOU—AVAIL YOURSELF OF THIS UNUSUAL OPPORTUNITY AT ONCE.

AVAILABLE FOR ONE WEEK ONLY
MADE TO MEASURE DEPT. 3rd Floor

Your Finished Garment Will Be Ready in 3 Weeks

USE OUR
90 DAY
CHARGE PLAN

HARRY SUFFRIN

SHELBY ST. at STATE

OPEN
EVENINGS

FEDERAL TRADE COMMISSION
Docket No. 3403
IN THE MATTER OF JACOB LEGEL CO.
DATE NOV 27 1940
REPORTER
ETHEL E. FISHER & ASSOCIATES, INC.

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PLATE 60

BOARD OF EDUCATION
OF THE CITY OF NEW YORK

STRAUBENMULLER TEXTILE HIGH SCHOOL

WILLIAM H. DOOLEY, PRINCIPAL
351 WEST 18TH STREET
NEW YORK CITY

TELEPHONE CHELSEA 3-7370

TRADE COMMISSION

3403 ~~...~~ 311, 1922

Jacob Siegelbaum

Edward C. Reardon
Trial Examiner

November 1, 1939

ANNEXES

60 WEST 13TH STREET
124 WEST 26TH STREET
124 WEST 30TH STREET
521 WEST 145TH STREET

Federal Trade Commission
Room 500, 45 Broadway
New York City

Attn: Mr. E. E. Reardon

Gentlemen:

In reply to your questions under the head of
Summons - issued the twenty-fifth day of October,
I wish to supply the following information:

The Straubenmuller Textile High School has a register of nearly 8,000 students in the day and 5,000 in the evening. It teaches all branches of textiles. All students take a course in General Textiles which includes knowledge of fibers obtained from goats, also, sheep - vicuna, alpaca, etc. The text book used is "Textiles" by William H. Dooley, published by D. C. Heath and Company, 180 Varick Street, New York City. I refer you to Pages 23 and 181. In practically all of the dressmaking classes "Attractive Clothes" by Frances H. Consalus and William H. Dooley, published by Ronald Press, 15 East 26th Street, New York City, is used both as a text book and as a reference book. Attention is called to Page 322.

In addition, we have a wall chart made by Stroock and Company showing pictures - with samples - of different fibers, vicuna, alpaca, etc.

If you wish to have these exhibits I am willing to send them to you at your convenience.

I consider that it is part of general education under the head of commercial geography, textiles, or dressmaking, for the average high school student to know something of alpaca and vicuna and other goat hairs - as well as sheep wool.

Very truly yours,

WHD:J

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N.B. The witness fee was not submitted. Please send fee to cover cost of transportation.

WILLIAM H. DOOLEY,
Principal.

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[fol. 890] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent

And afterwards, to wit, the 7th day of March, 1944, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John Biggs, Jr., Honorable Charles Alvin Jones and Honorable Gerald McLaughlin, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 30th day of November, 1944, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 891] IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

Petition to Review Order of the Federal Trade Commission
to Cease and Desist

Before Biggs, Jones and McLaughlin, Circuit Judges

OPINION OF THE COURT—Filed November 30, 1944

By McLAUGHLIN, Circuit Judge:

The petitioner in this case has been manufacturing overcoats in the City of Philadelphia, Pa. for the last 30 years. In 1930 it developed a cloth for such coats consisting of a combination of alpaca, mohair and wool fibers, on a cotton backing. This was inexpensive and designed for warmth and long wear. The purpose of adding the cotton was to obtain a denser face for the garment than possible with animal fibers alone. That same year the petitioner corporation gave the name "Alpacuma" to the coats. Within two years, the petitioner brought out a top coat which it also called "Alpacuma." The top coat had the same animal fibers as the overcoat but in order to make it lighter, the cotton backing was eliminated.

Among other things, the Federal Trade Commission found that the name "Alpacuma" is misleading and deceptive [fol. 892] tively to a substantial portion of the purchasing public in that it represents or implies to such persons that the coats contain fiber obtained from the animal known as the vicuna. The Commission ordered that the petitioner forthwith cease and desist from "using the word 'Alpacuma' or any other word which in whole or in part is indicative of the word vicuna to designate or describe respondent's coats; * * *". This language is the first part of Paragraph Six of the order. The first five paragraphs and the balance of the sixth paragraph are conceded by the petitioner and do not concern us. The issue has, therefore, been importantly narrowed and simplified.

There was a dissent in the Commission to the part of the order here disputed. It is very short and we quote it in full:

"Commissioner Freet dissents from so much of the order as wholly prohibits the continued use of the trade name 'Alpacuna' for the reason that this trade name, which has been in use for more than thirteen years, is a valuable business asset, and is neither deceptive per se, nor is the testimony concerning its tendency or capacity to deceive sufficiently clear and convincing as to render such prohibition of its use necessary in the public interest."

The only questions involved are: was there substantial evidence supporting the Commission's finding and whether the remedy provided was within its powers.

According to the petitioner's testimony, which was not contradicted, the name "Alpacuna" was created by its sales manager who used a fanciful variation of the word alpaca, which animal represented 50% of the wool fibers in the fabric. To alpaca the suffix "una" was added partly in order to obtain a word that was very easy to pronounce and partly to signify that the Siegel Company was the one manufacturer and the first to make the coat. The head of the Siegel Company testified that he did not have vicuna [fol. 893] in mind at all in connection with the name "Alpacuna." He said further: "I was not familiar with it [vicuna] and I have been in business for 30 years and only in the last five years or six years I have heard of Vicuna. I was not interested in it. We never used it." It is undisputed that the vicuna is one of the rarest of animals. It is found principally in the high mountains of Peru and is of the llama family. In order to obtain its hair, the animal itself has to be killed. Such killing is regulated by law. Vicuna hair is one of the softest, finest animal fibers but has poor wearing qualities. Only a small amount of the fiber comes into the United States. The overcoats made from it, are valuable and run as high as \$900. The "Alpacuna" coats retail at \$40.

Strong testimony was presented supporting the petitioner's proposition that "Alpacuna" is a proper trade name for the particular coats and that the name does not represent to the public that the coats contain vicuna fiber. There was evidence of a poll taken in the particular section of a large

New York department store where such coats were sold. Over 200 customers chosen at random were questioned and not one of them declared that the name "Alpacuna" indicated vicuna to them. There were numerous other witnesses, including: members of the public, reputable people in the clothing trade, department store specialists in protecting customers, a representative of clothing workers, a textile expert, etc. A person connected with the National Better Business Bureau stated he has never received a complaint regarding the name "Alpacuna." One of the functions of that organization is to receive complaints as to merchandise. The only person in the country who manufactures vicuna coats sent a letter to the Commission saying that he had no objection to the use of the name "Alpacuna" by petitioner. In addition to the direct defense testimony, some of the government witnesses supported the defense contention affirmatively by testimony to the effect that [Col. 894] "Alpacuna" did not mean vicuna content to them; there were other government witnesses whose testimony was weak; and still others indicating prejudice or bias.

Petitioner also produced testimony tending to show that vicuna in connection with fabrics, denotes a soft finish cloth and argues that it is, therefore, properly applied to petitioner's coats. As to this, the same textile expert described vicuna finish cloth as a soft finish fabric with no definite indication as to its fiber content. This was corroborated by other witnesses. Petitioner introduced some dictionary definitions defining vicuna wool as the wool of the vicuna or a mixture of wool and cotton used for soft fabrics. Petitioner strongly argues that its product is a vicuna cloth, with the dictionary definitions justifying any possible implication in the name "Alpacuna" with respect to vicuna.

Petitioner next stresses the point that vicuna animal fiber and its qualities are not generally known to the public. It calls attention to the admitted rarity of the animal. One expert for the Commission stated that it is almost extinct. It is suggested that because of the extremely limited quantity of vicuna fiber available and because of its perishable quality, it would not be practical to attempt to combine it with alpaca from the standpoint of large scale commercial manufacture. It is contended that the thought of the \$40. "Alpacuna" coat capitalizing on the term vicuna is far fetched since most of the potential customers do not

have the least idea as to vicuna and the few who do, readily understand that a coat for large production and in the lower price field could not be produced from vicuna fiber.

In addition to the above, there are certain other important facts which appear. This proceeding was started in 1938 and in the original complaint there was no charge against the petitioner for using the name "Alpacuna." After answer had been filed to the original complaint, settlement negotiations were entered into at the suggestion of counsel for the Commission and the Siegel Company executed and [fol. 895] returned the stipulation for settlement drawn by the Commission's counsel. That settlement was not approved by the Commission and thereafter an amended complaint was filed which included the allegation regarding the use of the name "Alpacuna." A group of retail stores who handle the "Alpacuna" coats have filed a brief as amici curiae in support of the petitioner's stand. Those stores set out that they have a very definite interest in the retention of the name by reason of cooperation in extensive advertising and selling the product over a period of years and that the barring the use of the name "Alpacuna" is a matter of serious detriment and direct prejudice to them.

There was also an array of witnesses on behalf of the Commission. The Director of the Bureau of Standards of one of New York's largest department stores said: "I take it this coat is made of a combination of alpaca and vicuna fibers." A person connected with a leading Philadelphia department store stated: "'Alpacuna' overcoats conveys to me Alpaca and Vicuna, a combination of alpaca and vicuna." A housekeeper on cross examination stated she arrived at the impression that the garment was made of alpaca and vicuna as she said, "Well, from the name itself." The assistant director of the Washington Better Business Bureau testified to the same effect. A person who had actually sold the coats for five or six years was of the opinion that they contained alpaca and vicuna fibers. The only person testifying who had purchased an "Alpacuna" coat said that he was told at the time he bought it that the coat was made of " . . . a vicuna wool-bearing South American animal." A number of other persons, including a construction engineer, housewives, a teacher, a physician, a publicity director of a Philadelphia department store, a director of merchandise research of another Philadelphia department store, a clothing salesman for a third

Philadelphia department store, several people connected with various clothing houses and men's shops, all associated vicuña with the word "Alpacuna." Most of these witnesses [fol. 896] gave their impression after examining one or more of the various Commission exhibits of advertising matter with reference to the coats.

The Commission vigorously disputed petitioner's proposition that vicuña does have an established secondary meaning. It produced dictionaries and encyclopedias in which pictures of the vicuña were shown and also various encyclopedias, dictionaries, and textile publications which do not include the secondary meaning of the word as asserted by the petitioner. Other evidence was produced tending to show that vicuña was known to a substantial portion of the public. For example, a letter from a principal of a textile high school in New York City was in evidence and stated that the school had a register of nearly 13,000 students, day and evening, with all of them taking a course in general textiles embracing knowledge of fibers obtained from goats, also sheep, vicuña, alpaca, etc. and that books dealing with the subject, and a wall chart showing pictures with samples of different fibers, vicuña, alpaca, etc. were used in the course. The letter concluded by stating: "I consider that it is part of general education under the head of commercial geography, textiles and dressmaking for the average high school student to know something of alpaca and vicuña and other goat hairs—as well as sheep wool."

Obviously, from the above very brief outline of the evidence, the petitioner has made an impressive showing in its effort to retain the name "Alpacuna." The Siegel Company is a well known and highly regarded concern and its coats have achieved considerable popularity in their own price range. They are widely publicized and large sums of money have been expended by the Siegel Company and various retail stores in merchandising them. The Siegel Company coined the name for the coats in 1930 and has been using it since that time. At this time it is a valuable asset not only to the company but, as the amicus curiae brief [fol. 897] points out, to certain retail establishments throughout the United States.

Just as obviously, it clearly appears that there is substantial evidence supporting the Commission's decision. Even counsel for the petitioner are forced to concede, as stated in their brief: "It is true that a number of witnesses

called by trial counsel testified that the name "Alpacuna" signified a vicuna animal fiber content." Upon the whole record the Commission made a finding that the name "Alpacuna" is misleading and deceptive to a substantial portion of the purchasing public in that it represents or implies to such persons that the coats contain fiber obtained from the animal known as vicuna. The likelihood of misleading the class of customers with which the petitioner generally deals seems slight but in view of the testimony that some of the purchasing public believes that "Alpacuna" implies vicuna content, we cannot say that the finding is not supported by substantial evidence or that the order to cease and desist from the use of the word "Alpacuna" which the Commission issued in consequence of the finding was without foundation. Even assuming that some of the testimony on behalf of the Commission was prejudiced or biased as contended, if the Commission wished to rely upon such testimony, we may not intervene whatever our thought. *Segal v. Federal Trade Commission* (C. C. A. 2) 142 F. 2d 255. With reference to the secondary meaning of vicuna or vicuna cloth, as said by Mr. Justice Cardozo in *Federal Trade Commission v. Algoma Co.*, 291 U. S. 67 at 80:

"The evidence here falls short of establishing two meanings with equal titles to legitimacy by force of common acceptance."

The Federal Trade Commission Act, Title 15, Section 45c, U. S. C. A. provides that:

"The findings of the Commission as to the facts, if supported by evidence, shall be conclusive."

[fol. 898] This means substantial evidence. *Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568 at 583; *Federal Security Administrator v. Quaker Oats*, 318 U. S. 218, 227, 228. The fact that there is a real conflict in the testimony with indeed substantial evidence by the petitioner contrary to the finding, does not change the situation, as this court cannot appraise testimony or pick and choose "for itself among uncertain and conflicting inferences therefrom." *Federal Trade Commission v. Algoma Co.*, supra. It is not necessary in order to sustain the Commission's finding that actual purchases must be made, with the buyer deceived by the name. It is enough if the name has both the capacity

and tendency to deceive the ordinary purchaser. Potential injury is the test. Federal Trade Commission v. Raladam Co., 316 U. S. 149, 152; Federal Trade Commission v. Hires Turner Glass Co., 81 F. 2d, 362 (C. C. A. 3); Jaffee v. Federal Trade Commission (C. C. A. 7) 139 F. 2d 112. Absolving the petitioner from any deliberate effort to deceive does not affect the Commission's finding. Federal Trade Commission v. Balme (C. C. A. 24928), 23 F. 2d 615, 621; certiorari denied 277 U. S. 598.

Although we sustain the Commission on its finding as to the name because of substantial evidence supporting that finding, we think strongly that the order is far too harsh. It destroys a widely and favorably known trade name, in existence for fourteen years. It causes serious injury to the petitioner and its retail outlets. The infraction, as the case now stands, is slight and could be cured by simple qualifying language. We could dispose of the problem by modifying the Commission's order as suggested, if the practice as outlined in Federal Trade Commission v. Royal Milling Co., 288 U. S. 212 and Federal Trade Commission v. Hires Turner Glass Co., *supra*, a Third Circuit case, was still the law. While the Supreme Court has not dealt with the question of remedy in a Fair Trade Commission suit since the Royal Milling case, there have been a number of opinions from that court concerning remedies prescribed by the [fol. 899] Labor Board. In those cases the court has forcibly pointed out that the matter of remedy is also for the administrative agency. In Medo Corp. v. Labor Board, 321 U. S. 678, where the remedy ordered by the Labor Board was upheld, Chief Justice Stone for the court said in a footnote at pages 681 and 682:

"It has now long been settled that findings of the Board, *as with those of other administrative agencies*, are conclusive upon reviewing courts when supported by evidence, that the weighing of conflicting evidence is for the Board and not for the courts, that the inferences from the evidence are to be drawn by the Board and not by the courts, save only as questions of law are raised and that upon such questions of law, the experienced judgment of the Board is entitled to great weight. See Franks Bros. Co. v. Labor Board, *post*, p. 702; Labor Board v. Southern Bell Co., 319 U. S. 50, 60, and cases cited; Labor Board v. Nevada

Copper Co., 316 U. S. 105, 406-107, and cases cited; Dobson v. Commissioner, 320 U. S. 489, 501, and cases cited." (Italics ours.)

See also Dixie Pine v. Commissioner, 320 U. S. 516, 519; compare Security Mills v. Commissioner, 321 U. S. 281 at 286; and see cases collected in quotation from opinion in Herzfeld v. Federal Trade Commission, *infra*.

The Second Circuit, which several times, on the authority of the Royal Milling decision had modified orders of the Federal Trade Commission¹ has now recognized this in a series of opinions commencing with Herzfeld v. Federal Trade Commission, 140 F. 2d 207, where Judge Learned Hand, for the court, said at page 209:

"However, since Federal Trade Commission v. Royal Milling Co., *supra*, 288 U. S. 212, 53 S. Ct. 335, 77 L. Ed. [fol. 900] 706, was decided, the Supreme Court has so much circumscribed our powers to review the decisions of administrative tribunals in point of remedy, as they have always been circumscribed in the review of facts. Such tribunals possess competence in their special fields which forbids us to disturb the measure of relief which they think necessary. In striking that balance between the conflicting interests involved which the remedial measures, they are for all practical purposes supreme. International Ass'n of Machinists v. National Labor Relations Board, 311 U. S. 72, 82, 61 S. Ct. 83, 85 L. Ed. 50; Phelps Dodge Corp. v. National Labor Relations Board, 313 U. S. 177, 198-200, 61 S. Ct. 845, 85 L. Ed. 1271, 133 A. L. R. 1217; Virginia Electric & Power Co. v. National Labor Relations Board, 319 U. S. 533, 541, 543, 63 S. Ct. 1214, 88 L. Ed. 1568; Williams Motor Co. v. National Labor Relations Board, 8 Cir. 128 F. 2d 960, 965. It is true that all these decisions concerned the Labor Board, but that tribunal does not enjoy a position of peculiar authority, as the court has indicated in other connections. Gray v. Powell, 314 U. S. 402, 412, 413, 62 S. Ct. 326, 86 L. Ed. 301; Dobson v.

¹ Bear Mill Mfg. Co. v. Federal Trade Commission (C. C. A. 2) 98 F. 2d, 67; Federal Trade Commission v. Cassoff (C. C. A. 2) 38 F. 2d, 790; Fluegelman & Co. v. Federal Trade Commission (C. C. A. 2) 37 F. 2d, 59.

Commissioner, 320 U. S. 489, 64 S. Ct. 239; *Commissiofer v. Heininger*, 320 U. S. 467, 64 S. Ct. 249. In controversies about trade-marks, and particularly about trade names and make up, the question is almost always one of degree; i. e., how far the chance of deception outweighs the inconvenience, or worse, to the merchant inevitable in compelling him to change his mark, his name, or his package. The decree marks the compromise which the court thinks adequate and necessary; it is the resultant of those unexpressed determinants which collectively we conceal under the term "discretion." We do not forget that from time immemorial this duty has been entrusted to courts, but that is irrelevant. Congress having now created an organ endowed with the skill which comes of long experience [Vol. 901] and penetrating study, its conclusions inevitably supersede those of courts, which are not similarly endowed."

That was followed by *Parke, Austin & Lipscomb v. Federal Trade Commission*, 142 F. 2d 437, where Judge Chase said at pages 441 and 442:

"The petitioners are standing upon much firmer ground when they insist that this paragraph in the order is needlessly severe in its sweeping requirement that the words 'Smithsonian Institution' must be eliminated from the corporate name of petitioner Smithsonian Institution Series, Inc. There may well be some alternative remedy less drastic but adequately effective which might satisfy the requirements of fairness and should be adopted. On this record, however, we cannot be sure that the Commission has abused its discretion in this respect, and only in that event should we interfere with its action."

The late case of *Charles of the Ritz Distributors Corporation v. Federal Trade Commission* (C. C. A. 2) 143 F. 2d, 676, in the same court, with opinion by Judge Clark, is to the same effect. The question, in connection with another administrative agency, the Securities & Exchange Commission, has been before the First Circuit recently in *American Power & L. Co. v. Securities and Exchange Com-*

mission, 141 F. 2d 606 where Judge Magruder for the court said at page 619:

"It is not enough that some other remedy, suggested by petitioners, might accomplish the statutory purposes in whole or in part. The choice of remedy is a matter confided primarily to the expert judgment of the Commission, and in this field the courts are quite properly loath to set up their own judgment in opposition to that of the administrative tribunal."

It is evident, therefore, that the discretion as to the remedy in such controversy as this has now been vested in the [fol. 902] Federal Trade Commission. That discretion has been exercised to totally prohibit the use of the name "Alpacuna" to the petitioner. Since the Commission has such power, we are unable, in view of the evidence, to say that the power has been abused in this instance, though under the same facts and circumstances, if we were still in control of the remedy, we would modify the order as above indicated.

Order affirmed.

A true Copy. Teste:

_____, Clerk of the United States Circuit Court
of Appeals for the Third Circuit.

[fol. 903] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

VS.

FEDERAL TRADE COMMISSION, Respondent

On Petition to Review and Order of the Federal Trade
Commission

Present: Biggs, Jones and McLaughlin, Circuit Judges.

This cause came on to be heard on the transcript of record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the order of the Federal Trade Commission in this cause be, and the same is hereby affirmed.

By the Court, McLaughlin, Circuit Judge.

November 30, 1944.

Endorsements—Order Affirming Order of Federal Trade Commission. Received & Filed Nov. 30, 1945. Wm. P. Rowland, Clerk.

[fol. 904]

[File endorsement omitted]

[fol. 905] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

[Title omitted]

PETITION FOR REHEARING—Filed December 29, 1944

To the Honorable the Judges of said Court:

The petition of Jacob Siegel Company respectfully represents:

The Opinion of this Court was filed November 30, 1944; and upon motion of the present petitioner, the time for filing this Petition for Rehearing was extended to December 30.

The decision of the Federal Trade Commission has been reviewed in this proceeding, and ends with an Order to Cease and Desist (65-4a). This order summarily directs the petitioner not to use the name "Alpacuna". This trade name has been in use for upwards of fourteen years, and during that time there is no evidence that any one has ever been deceived by its use.

[fol. 906] The clear purpose of the Commission is to forestall anticipated deception.

The Opinion of the Court states at page 8 as follows:

"Although we sustain the Commission on its finding as to the name because of substantial evidence supporting that finding, we think strongly that the order is far too harsh. It destroys a widely and favorably known Trade name, in existence for fourteen years. It causes serious injury to the petitioner and its retail outlets. The infraction, as the case now stands, is slight and could be cured by simple qualifying language."

The Court then proceeds to state that it would dispose of the problem by modifying the Commission's Order as suggested were it not for the fact that the Court feels it has no power to do so. Therefore, the Court concludes its Opinion by affirming the Order of the Federal Trade Commission, with which it thus disagrees.

Petitioner respectfully prays that an order for rehearing be entered, in order that an argument may be held at length upon the question of whether or not the Court has power to modify the Order of the Commission with which it disagrees. Petitioner assigns in support of its Petition the following grounds:

(a) The latest case on the subject, dealing with the Federal Trade Commission, is

Federal Trade Commission v. Royal Milling Company,
288 U. S. 212 (1933).

In this case, the Commission entered a Cease and Desist Order, and the Supreme Court stated (p. 217):

"Although we sustain the commission in its findings and conclusions . . . we think under the circumstances the commission went too far in ordering what amounts to a suppression of the trade names."

[fol. 907] The Supreme Court thereupon reversed the Circuit Court of Appeals, and sent the case back for the entry of a modified order less drastic than the destruction of the trade name involved in that case. This is the last case having to do with the subject-matter of trade names before the Federal Trade Commission.

(b) This Court considers that the foregoing case has been, in effect, overruled by later cases by the Supreme Court having to do with appeals from the National Labor Relations Board, where the methods adopted by that Board have been largely held free from interference by the courts. These later cases, however, do not expressly overrule the Royal Milling Company case, and they have to do with cases arising under the National Labor Relations Act, which is much more sweeping in its scope than is the Federal Trade Commission Act. Thus, the National Labor Relations Act, 29 U. S. C., Section 160, states:

"(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice . . . affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise."

This is quite different from the language of the Federal Trade Commission Act, 15 U. S. C., Section 45, which provides:

"(a) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

[fol. 908] Both statutes give to the respective commissions conclusive jurisdiction upon the finding of facts. The two commissions, however, are quite different in purpose, and the statutory words prescribing their powers are greatly different.

(c) This Court has thought it appropriate to follow certain decisions in the United States Circuit Court of Appeals for the Second Circuit, wherein that Court has regarded itself without power to correct the methods used by the Federal Trade Commission to accomplish these purposes. Petitioner believes that the United States Circuit Court of Appeals for the Second Circuit is in error in its conclusion, and that this Court is not bound to follow its decisions.

(d) The entire subject-matter briefly outlined above has not been made the subject of any argument before this Court, and it has not been briefed. The Court is urged to entertain this Petition for Rehearing and to afford the Petitioner an opportunity to present its position more fully in a Brief and an oral argument, following a complete study of the cases cited in this Court's Opinion and the statutes involved.

The Petitioner respectfully submits that the Royal Milling Company case has not been expressly overruled and that this Court should not consider it as having been overruled.

Respectfully submitted, Leo Weinrott, Robert T. McCracken, Attorneys for Petitioner.

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay.

Robert T. McCracken, Attorney for Petitioner.

[fol. 909] [Stamp:] Received & Filed Dec. 30, 1944. William P. Rowland, Clerk

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent

PETITION OF AMICUS CURIAE FOR RE-HEARING

To the Honorable the Judges of said Court:

The petition of Amicus Curiae, a group of petitioner's retail outlets, respectfully represents:

The opinion of this Court was filed November 30th, 1944. The time for filing a petition for re-hearing has, upon information and belief, been extended by order of this Court to December 30th, 1944.

This appeal involves the review of an order of the Federal Trade Commission directing the petitioner herein to cease and desist using the name "Alpacuna," a trade name used by petitioner for upwards of 14 years in connection with men's coats manufactured by it and sold extensively throughout this country by outstanding retail firms, of which the group appearing as Amicus Curiae is representative.

Since the publication of the opinion of this Court, a large number of additional retail firms throughout the country have expressed their great interest in the preservation of the trade name "Alpacuna" and have informed us of the prejudice that would result to them in the enforcement of the order of the Federal Trade Commission in its present form, as affirmed by this Court.

[fol. 910] The opinion of this Court specifically turns upon the question of this Court's power to modify the Federal Trade Commission's order. This Court definitely stated that it would modify the order by permitting the use of the

trade name "Alpacuna," with appropriate limitations, if it had the power so to do and wrote, at page 8, as follows:

"Although we sustain the Commission on its finding as to the name because of substantial evidence supporting that finding, we think strongly that the order is far too harsh. It destroys a widely and favorably known trade name, in existence for fourteen years. It causes serious injury to the petitioner and its retail outlets. The infraction, as the case now stands is slight and could be cured by simply qualifying language. We could dispose of the problem by modifying the Commission's order as suggested, if the practice as outlined in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212 and *Federal Trade Commission v. Hires Turner Glass Co.*, *supra*, a Third Circuit case, was still the law."

The opinion concedes that there is no specific ruling of the United States Supreme Court overruling *Federal Trade Commission v. Royal Milling Co.*, *supra* (page 8). However, the Court expresses itself as bound by certain recent decisions of the Circuit Court of Appeals for the 2d Circuit, holding that the Federal Trade Commission is supreme as to the appropriate remedy when the order is based upon substantial evidence.

Since the Supreme Court's decision in *Federal Trade Commission v. Royal Milling Co.*, *supra*, has never been overruled or even questioned by that Court, Amicus Curiae contends that the *Royal Milling Co.* decision should be followed and applied irrespective of the contrary rule adopted by the 2d Circuit. The provision of the Federal Trade Commission Act that its findings as to the facts, if [fol. 911] supported by evidence, shall be conclusive was clearly never intended to deprive the Circuit Courts of their power to modify the remedy ordered where a harsh and inequitable result would obtain.

Amicus Curiae submits that the Court is not powerless in this connection and may exercise equitable restraint upon the power of the Federal Trade Commission in the manner approved in *Federal Trade Commission v. Royal Milling Co.*, *supra*. As a matter of fact, the Circuit Court of Appeals for the 9th Circuit has recently so held, for it has refused to enforce a portion of an order of the Federal Trade Commission as inequitable and far too broad, even though the order was based on substantial

evidence. *Ultra-Violet Products Inc. v. Federal Trade Commission*, 143 F. 2d 814, 816-817 (C. C. A. 9th, June 30, 1944). That decision was handed down after the argument of the appeal herein. It has not heretofore been cited by any of the parties in this case and was not referred to in the opinion of this Court.

This Court has found that petitioner's infraction "is slight and could be cured by . . . qualifying language" (page 8), that the trade name is "a valuable asset not only to the company, but, as the Amicus Curiae brief points out to certain retail establishments throughout the United States", (pages 6 and 7) and that petitioner is a "well known and highly regarded concern" (page 6). This Court was disposed to accomplish the result sought by the Federal Trade Commission in a manner which would not only protect the public but would also protect petitioner's valuable trade name. Since there is a simple method therefore, approved by a controlling Supreme Court decision, Amicus Curiae respectfully urges that this Court should exercise its supervisory, equitable power and should not adopt the rule of the 2d Circuit. Rather this Court should follow *Federal Trade Commission v. Royal Milling Co.*, *supra*, and *Ultra-Violet Products Inc. v. Federal Trade Commission*, *supra*.

[fol. 912] This Court said, at the very end of its opinion, ". . . if we were still in control of the remedy, we would modify the order as above indicated". (Page 12) Amicus Curiae contends that the Court is still in control of the remedy and that this Court, therefore, erred in holding the contrary.

Amicus Curiae is informed that the Jacob Siegel Co., the petitioner herein, has submitted or is about to submit a petition for re-hearing and asks that this petition be considered with that application and in support thereof.

Wherefore, Amicus Curiae respectfully prays that an order for a re-hearing be entered herein.

Respectfully submitted, Marshall, Bratter & Seligson, Attorneys for Amicus Curiae, by Seymour M. Klein, of Counsel.

We hereby certify that this Petition for Rehearing is presented in good faith and not for delay.

Marshall, Bratter & Seligson, Attorneys for Amicus Curiae, by Seymour M. Klein, Counsel.

[fol. 913] [Stamp:] Received & Filed, Jan. 10, 1945. William P. Rowland, Clerk

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

ANSWER TO PETITION FOR REHEARING

W. T. Kelley, Chief Counsel, Federal Trade Commission; George W. Williams, Special Attorney, Attorneys for the Respondent, of Washington, D. C.

[fol. 914] Answering the said petition, the respondent respectfully represents and states that—

The Jacob Siegel Company, the petitioner, on December 29, 1944, filed a petition for rehearing in the above matter predicated upon an observation made by the Court in its opinion filed November 30, 1944, and as set out in said petition (page 2), namely:

Although we sustain the Commission on its finding as to the name because of substantial evidence supporting that finding, we think strongly that the order is far too harsh. It destroys a widely and favorably known trade name, in existence for fourteen years. It causes serious injury to the petitioner and its retail outlets. The infraction, as the case now stands, is slight and could be cured by simple qualifying language.

The Commission's order interdicted the use of the trade name "Alpacuna" as a name for certain overcoats and topcoats manufactured by the petitioner because it was found that this name implied the existence in said coats of the wool of the vicuna. The Commission had also found [fol. 915] that it implied that the overcoats, as well as the topcoats manufactured by the petitioner were wholly wool, when as a matter of fact the overcoats were composed of one-third cotton. The Commission further found that the

use of this deceptive name placed in the hands of retailers means whereby the public may be deceived, even though unintentionally. There was ample evidence to sustain this and the other phases of the Commission's cease and desist order and, in fact, it was admitted by the petitioner,¹ and the Court found, that there was substantial evidence to support said order. In other words, the petitioner has had its full day in Court.

The petition, it is respectfully submitted, should be denied, and for, among other reasons, the following:

1. The phase of the matter presented by the petition was thoroughly considered by the Court. Though the same had been forcefully brought to the Court's attention by the brief of the Amicus Curiae (Joint II, page 23, et seq.) and the discussion at the hearing, nevertheless, the petitioner did not see fit to ask leave to file a supplemental brief or to reargue this question. In any circumstance, it was a phase of the matter that would naturally have been treated by able counsel in petitioner's original brief if it had been thought that it was of any substance in the present development and state of the law. The same distinguished counsel appeared for petitioner before the Commission and all through the proceedings, and hence was, and is, well informed as to the progress of the law in such cases.

2. The cases upon which the Second Circuit relied, and the additional cases upon which this Court relied, fully sustained the conclusions reached by this Honorable Court as to its jurisdiction to modify the Commission's Order, as prayed in said petition.

3. This Court has several times said that a flat contradiction of a trade name will not be permitted as a *qualification*, as a contradiction is not a qualification. It would be a misnomer to say that a modification could be made by using categorically contradictory matter.² The modification [fol. 916] allowed in the *Royal Milling case*³ did not amount to a contradiction, as one process of milling was actually engaged in. If the trade name "Alpacuna" is understood by any substantial portion of the public as

¹ Petitioner's original brief, p. 8.

² *Heusner v. F. T. C.*, 106 F. 2d 596 (C. C. A. 3, 1939).

³ 288 U. S. 212 (1933).

being derived in part from the fiber of the vicuña, then there can be no qualification thereof. Nothing less than a flat contradiction, as above stated, could possibly be employed to that end. Furthermore, *Federal Trade Commission v. Algoma Lumber Company*, 291 U. S. 67, 81-82 (1934), where this subject was fully presented and petitioner's position strongly urged, was decided after the *Royal Milling case*, and was as hard a case as the Court indicates the instant one is, and yet no qualification was allowed. Disposing of this phase of that case, the Court said that "the finding of unfair competition being supported by the testimony, the Commission did not abuse its discretion in reaching the conclusion that no change of the name *short of the excision of the word 'white' would give adequate protection.*" [Italics supplied.] This language is as applicable to the instant case as to that case.

4. Furthermore, it was admitted that once the name went out to the dealers or retailers, there was no way to control the use of it.⁴ That this is true is apparent. The complaint alleges that the use of such names places in the hands of dealers a means of deception, and this is referred to in the Commission's brief, pp. 1-2; 37, *et seq.* If for no other reason, this would be adequate support for this part of the Commission's order.

5. As the petition of the Amicus Curiae is substantially the same as that of the petitioner, Jacob Siegel Company, it is prayed that, in the interest of economy, this answer be considered as an answer thereto. What has been said above applies with double force to the Amicus Curiae, as the phase of the matter covered by the petition was discussed at length in the original brief thereof and at the hearing in this Court, as above stated.

F. T. C. v. Royal Milling Co. and Ultra-Violet Products, Inc. v. F. T. C.,⁵ were referred to by this petitioner, the first of which has been hereinabove disposed of as, aside [fol. 917] from any other reason, being inapplicable, and the second one is likewise inapplicable. The court only changed the order in the particular where it was unsup-

⁴ Petitioner's original brief, page 5.

⁵ 143 F. 2d 814 (C. C. A. 9, 1944).

ported by any evidence, which is a totally different matter from the instant question.

It is respectfully submitted that both petitions should be denied.

W. T. Kelley, Chief Counsel; George W. Williams,
Special Attorney, Attorneys for Federal Trade
Commission.

Washington, D. C., January 1945.

[fol. 918] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent

SUR PETITION FOR REHEARING

And now, to wit, March 6, 1945, after due consideration, the petition for rehearing in the above-entitled case is hereby granted. Said rehearing to be restricted to possible modification of the Federal Trade Commission's order.

Philadelphia, — — —.

John Biggs, Jr., Circuit Judge.

Endorsements: Order Granting Rehearing. Received
& Filed March 6, 1945. Wm. P. Rowland, Clerk.

[fol. 919] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent

And afterwards, to wit, the 18th day of May, 1945, come the parties aforesaid by their counsel aforesaid, and this case being called for re-argument sur possible modification of the Order of the F. T. C., before the Honorable John Biggs, Jr.,

Honorable Herbert F. Goodrich and Honorable Gerald McLaughlin, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 20th day of September, 1945, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 920] UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

Petition to Review Order of the Federal Trade Commission
to Cease and Desist

Before Biggs, Goodrich and McLaughlin, Circuit Judges

OPINION OF THE COURT UPON REHEARING—Filed September
20, 1945

PER CURIAM:

After carefully considering the question of possible modification of the Federal Trade Commission's order, we feel compelled to adhere to our original decision which we confirm.

A true Copy. Teste:

— — —, Clerk of the United States Circuit Court
of Appeals for the Third Circuit.

[fol. 921] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

vs.

FEDERAL TRADE COMMISSION, Respondent

NOTICE

To Robert T. McCracken, Esq., Leo Weinrott, Esq., C. Russell Phillips, Esq., 1421 Chestnut Street, Philadelphia 2, Pa.

GENTLEMEN:

Please Take Notice, that a proposed decree in this cause, a copy of which is hereunto annexed, is being transmitted today to William P. Rowland, Esquire, Clerk of the United States Circuit Court of Appeals for the Third Circuit, at his office in Room 2046 in the United States Courthouse, 9th and Chestnut Streets, Philadelphia 7, Pennsylvania, for submission to said Court in accordance with the usual practice.

Joseph J. Smith, Jr., Assistant Chief Counsel, Federal Trade Commission.

Washington, D. C.

October 3, 1945

Receipt of a copy of the above notice, and draft of proposed decree thereunto annexed, is hereby acknowledged this — day of October, 1945.

—, —, —, —, —, Attorneys for the
Petitioner.

[fol. 922] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

Present: Biggs, Jones and McLaughlin, Circuit Judges

FINAL DECREE AFFIRMING AND ENFORCING ORDER TO CEASE
AND DESIST

Jacob Siegel Company, petitioner herein, having filed in this Court on June 15, 1943, its petition to review and set aside an order to cease and desist issued against it on April 28, 1943, by the Federal Trade Commission, respondent, in a proceeding before the said respondent entitled "In the Matter of Jacob Siegel Company, a corporation, Docket No. 3403"; and a copy of said petition having been served upon the respondent; and the respondent having thereafter certified and filed herein, as required by the Federal Trade Commission Act, a transcript of the entire record in said proceeding; and the matter having been heard by this Court on briefs and oral argument; and this Court having thereafter fully considered the matter and having rendered its decision on November 30, 1944, affirming and enforcing said order to cease and desist; and the Court, on September 20, 1945, upon rehearing granted March 6, 1945, having confirmed its decision:

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the aforesaid petition to review be and the same hereby is dismissed; and that the said order to cease and desist be and it hereby is affirmed and enforced, and petitioner is hereby commanded to obey said order to cease and desist and to comply therewith.

And It Is Hereby Further Ordered, Adjudged and Decreed that within ninety (90) days after the entry of this [fol. 923] decree the petitioner shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with said order to cease and desist.

Without prejudice to the right of the United States, as provided in Section 5 (1) of the Federal Trade Commission Act, to prosecute suits to recover civil penalties for violations of the aforesaid order to cease and desist hereby affirmed and enforced, and without prejudice to the right of the Federal Trade Commission to institute and maintain contempt proceedings for violation of this decree, this Court retains jurisdiction of this cause to enter such further orders herein from time to time as may become necessary effectively to enforce compliance in every respect with this decree and to prevent evasion thereof.

By the Court:

Gerald McLaughlin, United States Circuit Judge.

Endorsements—Decree Affirming and Enforcing Order to Cease and Desist. Received & Filed Oct. 9, 1945. Wm. P. Rowland, Clerk.

[fol. 924] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

PETITION FOR STAY OF ENFORCEMENT ORDER

The petition of Jacob Siegel Company by Robert T. Mcracken, its attorney, respectfully represents:

1. The decision of this court was filed November 30, 1944. A petition for rehearing was granted March 6, 1945, and the court by an opinion filed September 20, 1945 reaffirmed its previous decision. Under date of October 9, 1945, an enforcement order was entered enforcing a cease and desist order of the Federal Trade Commission.

2. The Petitioner has prepared a Petition for Writ of Certiorari to the Supreme Court of the United States, and is in the course of preparing a brief to accompany the same. The Clerk has been requested to provide a certified copy of the record for use in connection with the Petition for

Certiorari, and it is expected that the petition and brief can be printed and filed in the Supreme Court within the next sixty (60) days.

[fol. 925] 3. The enforcement order of October 9, 1945 is by its terms effective immediately. It directs the destruction of a valuable trade name "Alpacuna." If the consideration of this case by the Supreme Court of the United States is to be of proper use to the Petitioner, it is essential that the enforcement order be suspended or stayed until final conclusion of the case.

Wherefore Petitioner prays that the enforcement of the order of this Court, entered October 9, 1945, be stayed for sixty (60) days, and if within that time a Petition for Certiorari is filed, that the stay be automatically extended until final determination of the case by the Supreme Court of the United States.

And your Petitioner will ever pray.

Jacob Siegel Company, by Robert T. McCracken,
C. Russell Phillips, Its Attorney-.

[fol. 926] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT, OCTOBER TERM, 1943

No. 8407

JACOB SIEGEL COMPANY, Petitioner,

v.

FEDERAL TRADE COMMISSION, Respondent

ORDER

And Now, this 12th day of October, 1945, upon consideration of the annexed petition, it is directed that the enforcement of the order of this Court, entered October 9, 1945, be stayed for a period of sixty (60) days, and if within that time a petition for certiorari is filed by Petitioner in the Supreme Court of the United States, that this stay be automatically extended until final determination of this case by the Supreme Court of the United States.

By the Court, McLaughlin, Circuit Judge.

Petition & Order Staying Enforcement of Decree. Received and Filed Oct. 12, 1945. Wm. P. Rowland, Clerk.

[fol. 927] UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, Set.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Proceedings in the U. S. Circuit Court of Appeals for the Third Circuit in the case of Jacob Siegel Company, Petitioner, vs. Federal Trade Commission, Respondent, No. 8407, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 12th day of October, in the year of our Lord one thousand nine hundred and forty-five, and of the Independence of the United States the one hundred and seventieth.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

[fol. 922] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 2, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

(2717)

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 605 :

JACOB SIEGEL COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION.

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT
NO. 8407 AND BRIEF IN SUPPORT THEREOF.**

✓ ROBERT T. McCracken,
✓ LEO WEINROTT,
✓ C. RUSSELL PHILLIPS,
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**IN THE
Supreme Court of the United States**

OCTOBER TERM, 1945.

Jacob Siegel Company,

Petitioner,

v.

Federal Trade Commission,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.**

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a writ of certiorari issue to review the Decree of the Circuit Court of Appeals for the Third Circuit, entered October 9, 1944, affirming and enforcing the cease and desist order of the Federal Trade Commission entered April 28, 1943.

Opinion Below.

The opinion of the Circuit Court of Appeals is reported at 150 Fed (2d) 751 and is printed in the Record at p. 891.

Basis of Jurisdiction.

Jurisdiction is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938. The opinion of the Circuit Court of Appeals for the Third Circuit was filed November 30, 1944; a petition for rehearing was granted March 6, 1945; and its opinion confirming its original decision was filed September 20, 1945. A stay of the enforcement order pending this petition was entered October 12th, 1945 (R. 920).

Questions Presented.

(1) Whether a Circuit Court of Appeals may modify an order of the Federal Trade Commission which it believes harsh and unreasonable, as was held proper in the case of **Federal Trade Commission v. Royal Milling Co.**, 288 U. S. 212 (1933), and **Federal Trade Commission v. Hires Turner Glass Co.**, 81 Fed. (2d) 362 (1936) (C. C. A. 3).

(2) Whether this Court has the right, asserted in the **Royal Milling case**, to modify an order of the Federal Trade Commission which it may believe harsh and unreasonable.

Summary Statement.

Jacob Siegel Company has been manufacturing overcoats in Philadelphia for over 30 years, and since 1930 from a cloth it developed made of alpaca, mohair and wool fibres on a cotton backing. In that year it gave the name "Alpacuna" to the coats. About two years later the company brought out a top coat bearing the same name made of cloth of the same fibres, but, to make it lighter, the cotton backing was eliminated.

The Federal Trade Commission found the name "Alpacuna" is deceptive to a substantial portion of the purchasing public, in that it implies to such persons that the coat is made of the hair of a rare animal known as

the vicuna, which lives high in the Andes of South America.

There was a dissent by one of the Commissioners who felt the name was not deceptive per se, that it was a valuable name and ought not be destroyed.

The coat contains 50% alpaca and 10% mohair. The balance is wool. It was called alpaca-una, or Alpacuna, because of its large alpaca content. The "una" was a fanciful suffix.

There was no evidence at all that anyone had ever been deceived, but Government witnesses, who were experts in the business, testified they would take the word to imply that the garment contained vicuna fibre, notwithstanding an Alpacuna coat cost \$40. and one of vicuna would cost around \$900.

A cease and desist order was entered and the company sought review by the Circuit Court of Appeals for the Third Circuit. That Court stated in its opinion as follows (R. 898):

"Although we sustain the Commission on its finding as to the name because of substantial evidence supporting that finding, we think strongly that the order is far too harsh. It destroys a widely and favorably known trade name, in existence for fourteen years. It causes serious injury to the petitioner and its retail outlets. The infraction, as the case now stands, is slight and could be cured by simple qualifying language. We could dispose of the problem by modifying the Commission's order as suggested, if the practice as outlined in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212 and *Federal Trade Commission v. Hires Turner Glass Co.*, *supra*, a Third Circuit case, was still the law. While the Supreme Court has not dealt with the question of remedy in a Fair Trade Commission suit since the *Royal Milling* case, there have been a number of opinions from that court concerning remedies pre-

scribed by the Labor Board. In those cases the court has forcibly pointed out that the matter of remedy is also for the administrative agency"

A re-argument was granted upon a showing that other Circuits have been modifying orders of the Federal Trade Commission, but on September 20, 1945, the earlier decision was affirmed.

Reasons for Granting the Writ.

In the case of

Royal Milling Co. v. Federal Trade Commission, 288 U. S. 212 (1933),

the Federal Trade Commission found that the use of the word "milling" by the company in its name was deceptive because it was found to imply that the company ground its own grain, whereas, in fact, it blended flours. A Cease and Desist Order was entered based on evidence that "milling" was deceptive. The Circuit Court of Appeals for the Sixth Circuit affirmed. This Court reversed and remanded the case because the remedy of destroying a name long and honorably in use was too harsh. Simple qualifying words would remove the possibility of deception.

The same reasoning was followed by the Circuit Court of Appeals for the Third Circuit in the case of

Federal Trade Commission v. Hires Turner Glass Co., 81 Fed. (2d) 362 (1935)—C. C. A. 3.

The decision below is in conflict with the prior decision of the same court in the Hires Turner Glass Co. case and with the decision of this Court in the Royal Milling Co. case.

In the case of

Medo v. National Labor Relations Board, 321 U. S. 678 (1944). Decided April 10, 1944,

this Court held that the matter of remedy was for the National Labor Relations Board to decide. That case does not overrule the Royal Milling Co. case. There was no occasion for doing so. Nevertheless the Circuit Court of Appeals in this case has held the Royal Milling Co. case overruled by the Medo case.

Since the Medo case, numerous decisions have been made by Circuit Courts of Appeal in which those courts have, in fact, modified orders of the Federal Trade Commission with respect to the remedy. These cases are as follows:

Dietzgen Co. v. Federal Trade Commission, 142 Fed. (2d) 321 (1944)—C. C. A. 7. Decided May 3, 1944;

Ultra-Violet Products, Inc. v. Federal Trade Commission, 143 Fed. (2d) 814 (1944)—C. C. A. 9. Decided June 30, 1944;

Gelb v. Federal Trade Commission, 144 Fed. (2d) 580 (1944)—C. C. A. 2. Decided August 14, 1944;

Lekas & Drivas v. Federal Trade Commission, 145 Fed. (2d) 976 (1944)—C. C. A. 2. Decided November 30, 1944.

The decision of the Circuit Court of Appeals in this case is in conflict with all the above decisions in other circuits.

Therefore Petitioner submits that this Court may take jurisdiction of this case:

1. Because the decision below is in conflict with the latest decision of this Court;
2. Because the decision below is in conflict with the decisions of other Circuit Courts of Appeal set out above;
3. Because under the case of

Helvering v. Safe Deposit and Trust Co., 316 U. S. 56 (1942),

this case is of general importance in deciding whether there may be any judicial review of a decision by the Federal Trade Commission to destroy unnecessarily a trade mark of long standing which so far has not deceived any one.

Wherefore it is respectfully submitted that this Petition for Writ of Certiorari to review the decision of the Federal Trade Commission, as affirmed by the Circuit Court of Appeals for the Third Circuit, should be granted.

ROBERT T. McCracken,
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C. RUSSELL PHILLIPS,
Attorneys for Petitioner.
1421 Chestnut Street,
Philadelphia 2, Pennsylvania.

BRIEF.**In Support of Petition for Certiorari.****Basis of Jurisdiction.**

Jurisdiction is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938. The opinion of the Circuit Court of Appeals for the Third Circuit was filed November 30, 1944. A Petition for Rehearing was granted March 6, 1945, and the court's original opinion confirmed in a final opinion filed September 20, 1945. An enforcement order was entered October 9, 1945, and the enforcement thereof stayed to afford time for presentation of the issue to this Court.

Statement of the Case.

This is a petition to review a cease and desist order issued by the Federal Trade Commission directing the Petitioner to stop using the word "Alpacuna" on overcoats on the ground that the word is a misleading representation that the coats contain the hair of an animal called the "Vicuna" found only in the region of the Andes Mountains of South America. The coats do contain Alpaca fibre to the extent of about fifty per cent, and the name is a fanciful one invented by the Petitioner years

ago by combining the words "Alpaca" and "una", signifying exclusiveness.

The original complaint was filed on May 6, 1938. It charged the Petitioner with issuing samples, books and advertising copy, representing that the garments were made of all wool and hair fabric. There was no complaint about the use of the name "Alpacuna."

A settlement of the controversy was tentatively agreed upon between counsel for the parties, but was finally ignored by the Commission. Its counsel was changed for some reason unknown to the Petitioner and an amended complaint issued. This complaint contained additional allegations, including a complaint that the use of the term "Alpacuna" constitutes (R. 6a) "a representation by said respondent (Petitioner here) . . . that said fabric is composed entirely of the fur, wool or hair of the Alpaca and the Vicuna," and that it gave unscrupulous retailers means of increasing their sales "by representing that said overcoats and topcoats are all wool and composed solely of the fur, wool and hair of the Alpaca and Vicuna." A further complaint was made as to certain advertising copy which was claimed to represent that "Alpacuna" fabrics contain "the foreign fur, hair or wool of the Angora goat from the plains of Turkestan."

The Petitioner again filed an answer denying the additional complaints and averring that the name "Alpacuna" was a coined trade name and did not constitute a representation that the "Alpacuna" fabrics were composed of alpaca and vicuna and that, accordingly, it did not place in the hands of unscrupulous retailers a means of misrepresenting the coats.

The case then proceeded to hearing and after counsel for the Commission had conducted a long series of hearings in Philadelphia, New York, Baltimore and Washington he filed a further amended complaint. In this third complaint charges with respect to the term "Alpacuna"

were modified and it was charged that the term represented to the public that the fabric is (R. 280a) "composed entirely, or at least of a substantial quantity of the fur, wool or hair of the alpaca and vicuna." A further charge was made (R. 281a) that the slogan "There Is Only One Alpacuna Coat" was misleading when applied to both Petitioner's topcoats and overcoats, which were not of identical fibre content because of the cotton back on the heavy coat. Answer was again filed by Petitioner substantially denying the additional charges made. Petitioner was then permitted to put in its case. Testimony was taken before the Trial Examiner who filed his report without making any recommendation. Exceptions were taken and argued before the Commission with the result that a majority of the Commission endorsed an opinion directing the cease and desist order complained of. Commissioner Freer dissented (R. 655a).

The basic facts are that the Petitioner makes two overcoats, one a heavy coat, and the other a topcoat. They differ in character only that the heavy winter coat has a cotton back. On the topcoat, the cotton back is omitted. The face fabric was composed of 50% alpaca, and 20% mohair and 30% wool. The face yarns comprised 70% of the total fabric and the cotton back 30%.

The alpaca used in the fabric is known in the trade as Araqueppa alpaca. It is the only alpaca which can be obtained commercially and contains between 10% and 15% guanaco (hair from another small animal) (R. 539a, 540a, 541a; Petitioner's Ex. A with Answer, 17a). The mohair used in the fabric is obtained from Texas. The Angora goats of Texas produce as fine a mohair as the goats from Asia Minor (551a, 552a).

The fabric was designed for overcoats and when Petitioner placed the overcoats on the market it introduced them and sold them under the Company's trade name "Alpacuna," which was duly registered in the Patent Office as a trade-mark for "Men's topcoats, overcoats and suits in Class 39, clothing."

After the Commission issued its cease and desist order directing the Petitioner to stop using the trade name "Alpacuna", a petition for review was taken to the Circuit Court of Appeals. At the argument before the Circuit Court of Appeals, it developed that the Commission meant exactly what its order said. It proposed to stop completely the use of the trade name "Alpacuna" and it would not permit any modification of the word such as the addition of the words "contains no vicuna."

The Circuit Court of Appeals affirmed with considerable reluctance, as evidenced by the following excerpt from its opinion:

"Although we sustain the Commission on its finding as to the name because of substantial evidence supporting that finding, we think strongly that the order is far too harsh. It destroys a widely and favorably known trade name, in existence for fourteen years. It causes serious injury to the petitioner and its retail outlets. The infraction, as the case now stands, is slight and could be cured by **simple qualifying language**. We could dispose of the problem by modifying the Commission's order as suggested, if the practice as outlined in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212 and *Federal Trade Commission v. Hires Turner Glass Co.*, *supra*, a Third Circuit case, was still the law" (R. 898). (Emphasis supplied.)

Meanwhile the Petitioner changed its labels to conform with the copies attached later on in this brief. The labels now used show in conspicuous type beneath the word "Alpacuna" the words "contains no vicuna." A petition for rehearing was filed with the Circuit Court of Appeals. In granting this petition, the court entered the following order:

"After due consideration, the Petition for Rehearing in the above entitled case is hereby granted."

said rehearing to be restricted to possible modification of the Federal Trade Commission's order" (R. 915).

Thereafter, the Circuit Court of Appeals on September 20, 1945, filed its opinion upon rehearing, as follows:

"After carefully considering the question of possible modification of the Federal Trade Commission's order, we feel compelled to adhere to our original decision which we confirm" (R. 916).

At the argument on rehearing, Petitioner presented to the Circuit Court of Appeals the modified labels referred to and asked that the enforcement order be modified to permit the use of this modified label. The court would have been entirely willing to permit this modification, but counsel for the Commission refused to agree.

The enforcement order was entered without modification, and Petitioner filed this petition for certiorari.

Specifications of Errors Urged.

The Petitioner urges the following errors:

1. The court below erred in holding that it does not have the power to modify a remedy prescribed in a Federal Trade Commission cease and desist order which it believes to be unnecessarily harsh and destructive.

2. The court below erred in failing to hold the order of the Commission unconstitutional and void insofar as it unreasonably and unnecessarily destroys a valuable trade name.

Summary of Argument.

The name "Alpacuna" has never deceived anybody. The Commission has found it may in the future be deceptive because some experts brought in by it as witnesses stated they would interpret the name to mean the garment contained some vicuna fibre notwithstanding they knew it did not. Based on its finding of possible deception, resting on this evidence, the Commission ordered the destruction of this trade name and refuses to permit any neutralizing language such as "contains no vicuna." The Circuit Court of Appeals has concluded that it is without power to modify the remedy prescribed by the Commission.

The latest Federal Trade Commission case is

Federal Trade Commission v. Royal Milling Company, 288 U. S. 212 (1933).

This case has never been expressly overruled, but the Court of Appeals regards it as having been overruled by implication by the case of

Medo Photo Supply Corporation v. National Labor Relations Board, 321 U. S. 678 (1944).

Petitioner does not believe the Federal Trade Commission has unlimited power to impose an unreasonable remedy, and asks this Court to permit the Circuit Court of Appeals to modify the cease and desist order as it has announced it would do if it had the power or else to enter an order of modification in these proceedings.

Argument.

The cease and desist order directs the Petitioner not to use the name "Alpacuna" notwithstanding it has used that name for fourteen years without evidence of deception to any customer. In its Opinion, the Circuit Court of Appeals states (R. 898):

"Although we sustain the Commission on its finding as to the name because of substantial evidence supporting that finding, we think strongly that the order is far too harsh. It destroys a widely and favorably known trade name, in existence for fourteen years. It causes serious injury to the petitioner and its retail outlets. **The infraction, as the case now stands, is slight and could be cured by simple qualifying language. We could dispose of the problem by modifying the Commission's order as suggested if the practice as outlined in Federal Trade Commission v. Royal Milling Co., 288 U. S. 212 and Federal Trade Commission v. Hires Turner Glass Co., supra, a Third Circuit Case, was still the law.**" (Emphasis supplied).

The court then proceeds to state that it would dispose of the problem by modifying the Commission's order as suggested were it not for the fact that the court feels it has no power to do so. Therefore, the court concludes its opinion by affirming the order of the Federal Trade Commission, with which it thus disagrees.

Petitioner believes the court has the power to modify the order of the Commission along the lines indicated on either of two theories—First, the order is exceedingly harsh, and is, therefore, an abuse of discretion; and Secondly, there is no substantial evidence that the proposed qualifying words "contain no vicuna" would be ineffective. Therefore, the order is to that extent not supported by evidence. The latest case in this Court on the subject dealing with the Federal Trade Commission is

Federal Trade Commission v. Royal Milling Company, 288 U. S. 212 (1933).

In this case, the Commission entered a cease and desist order, and this Court stated (p. 217):

“Although we sustain the commission in its findings and conclusions . . . we think under the circumstances the commission went too far in ordering what amounts to a suppression of the trade names.”

This Court thereupon reversed the Circuit Court of Appeals, and sent the case back for the entry of a modified order less drastic than the destruction of the trade name involved in that case. This is the last case in this Court having to do with the subject-matter of trade names before the Federal Trade Commission.

The Circuit Court of Appeals was aware of the Royal Milling Company case, but considered it overruled by later cases in this Court dealing with the review of orders of the National Labor Relations Board. Petitioner believes that there is a different purpose to be served in labor relations cases, as well as different statutory provisions prescribing the review of the two types of administrative cases.

To begin with, labor relations cases often require supervision. In other words, an employer is required by order to recognize or deal with a particular Union, or not to recognize or deal with it, in his daily contact with his employees. Questions of administration of the orders constantly come up. There are sometimes elections to be held and supervised by the Board. Seldom will a mere cease and desist order suffice. Therefore, this Court has broadly stated in labor cases that it will not interfere with the methods adopted by the Board. Presumably, it would do so if those orders violated some provision of the Constitution, or perhaps some provision of a statute.

Suppose, for instance, the Labor Relations Board should order the president of a corporation employer, or the leader of an insurgent Union, shot at sunrise. No jury trial having been held, nor indictment found, it is hard to believe this Court would not say such an order was invalid, notwithstanding the Board's opinion as to the necessity for such action to accomplish labor representation in that industry.

This Court, doubtless, would say that the order was invalid because it bore no true relation to the object to be accomplished. It might say the order directed a desirable result, but was invalid because prohibited by Constitutional restriction.

The Petitioner believes this case is such a type. The object to be accomplished is the prevention of public deception or misbranding. The Act itself sets forth the policy as follows:

Act of September 26, 1914, c. 311, Sec. 5 38 Stat. 719; 15 U., S. C. A. 45, as amended.

"The Commission is hereby empowered and directed to prevent persons . . . from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

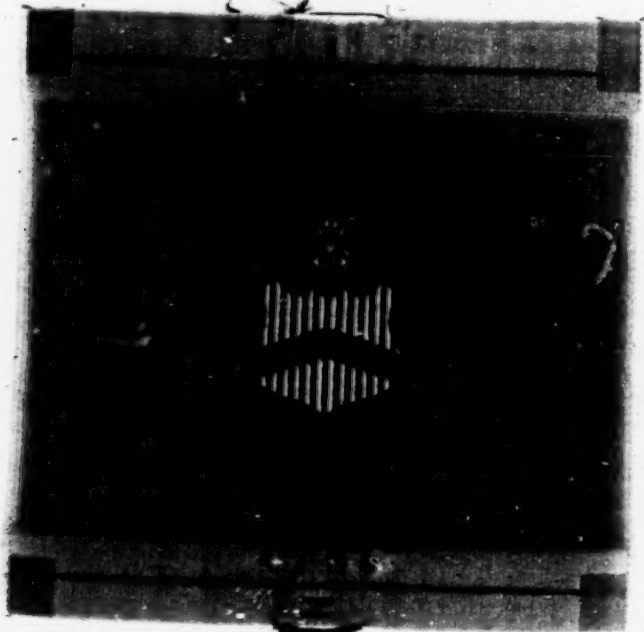
There seems to be no doubt that the use of the word "Alpacuna" upon a garment made of animal fibres is not a wrong in and of itself. The complaint of the Commission goes no further than to say that the use of the word on a garment containing alpaca, but no vicuna, is wrong because tending to be deceptive. The alleged deception is considered to lie in the connotation supposed to reside in the word "Alpacuna"—that the garment contains vicuna fibres. Vicuna fibre is present only in minute proportions, and quite unintentionally.

Petitioner believes that the word "Alpacuna" is not an evil word, *per se*. Such deception as the Commission

charges arises only by inference. No one ever was deceived. The only evidence to support the charge of deception is testimony by **experts** that they might be deceived, but weren't.

Thus, it is factually clear in this case that the only wrong to be cured is the supposed representation that vicuna fibre is present, when, in fact, it is not. Petitioner believes a direct statement on the label and immediately under Alpacuna "contains no vicuna" in conspicuous type would effectively negative any import the mark might carry to the contrary.

Since the opinion of the Circuit Court of Appeals was handed down November 30, 1944, Petitioner has devised and is using new labels showing the name prominently modified: "Alpacuna Contains No Vicuna." Samples of these labels are as follows:



ALPACUNA OVERCOAT

REG. U.S. PAT. OFF.

CONTAINS NO VICUNA**CONTENTS:**

FACE: 80% ALPACA & MOHAIR

40% VIRGIN WOOL

BACK: 100% LONG STAPLE COTTON

FACE CONSTITUTES 68% OF
FABRIC AND BACK 32%**DISTRIBUTED BY****ALPACUNA TOPCOAT**

REG. U.S. PAT. OFF.

MFR. No. 278**CONTENTS: 80% ALPACA & MOHAIR****40% VIRGIN WOOL****CONTAINS NO VICUNA****DISTRIBUTED BY**

The statement of fibre content is now required by the Wool Products Labeling Act; 54 Stat. 1128; 15 U. S. C. A. sec. 68.

The destruction of the mark goes beyond any necessary restriction. Destruction of the mark will, of course, be completely effective;—the liquidation of the Jacob Siegel Company would also be effective. Petitioner believes that any administrative remedy not reasonably limited to the object directed to be achieved by statute is a destruction of property and unconstitutional.

The Petitioner, therefore, respectfully reiterates that it believes this Court and the Circuit Court of Appeals have authority to limit the remedy to what is fairly related to the object to be accomplished, and if need be, to modify the administrative order. The Royal Milling case so holds.

The cases in this Court wherein this Court refuses to control the remedy in labor cases should not be extended to Federal Trade Commission cases because of the dif-

ferences in the character of the remedies and the differences in the statutes.

The National Labor Relations Act, 29 U. S. C. Section 160, provides; 49 Stat. 453:

“(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice * * * **affecting commerce.** This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise.” (Emphasis added.)

Affecting commerce is defined in Section 2, 29 U. S. C. 152 (7); 49 Stat. 450:

“(7) The term ‘affecting commerce’ means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.”

No such broad language is found in the Federal Trade Commission Act, 15 U. S. C. 45, which provides:

“(a) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.”

Both statutes give to the respective commissions conclusive jurisdiction upon the finding of facts. The two commissions, however, are quite different in purpose, and the statutory words prescribing their powers are different.

Thus “unfair methods of competition” is the Federal Trade Commission field of attack. “Tending to lead to a labor dispute” is the Labor Relations field. If the

same scope were given to the Federal Trade Commission, that Act would give that Commission power "to prevent persons . . . from using unfair methods of competition which may tend to lead to deception." (Emphasis added.) But the statute contains no such language. So even if we concede that both Commissions have exclusive jurisdiction over choice of remedy, the field within which the remedy may be reasonably applied is vastly greater in the National Labor Relations Act. The Federal Trade Commission is not given power to stop practices which "tend or lead" to deception, but only "unfair or deceptive acts or practices in commerce."

The difference in scope between the two Acts has been the subject of comment a number of times by this Court.

Polish National Alliance v. National Labor Relations Board, 322 U. S. 643. Decided June 5, 1944.

This case involved the question of the application of the National Labor Relations Act to an association of lodges which carried benefits or insurance upon members of fraternal organizations. In discussing the breadth of the Labor Relations Act, Mr. Justice Frankfurter states at page 647:

" . . . And so in this Act, unlike some federal regulatory measures, see *Federal Trade Commission v. Bunte Bros.*, 312 U. S. 349, 351; *Kirschbaum Co. v. Walling*, *supra* at 522-523, Congress has explicitly regulated not merely transactions or goods in interstate commerce but activities which in isolation might be deemed to be merely local but in the interlacings of business across state lines adversely affect such commerce. By the Wagner Act, Congress gave the Board authority to prevent practices 'tending to lead to a labor dispute burdening or obstructing com-

merce or the free flow of commerce.' §2 (7) of the National Labor Relations Act (49 Stat. 449, 450, 29 U. S. C. A. §152 (7)). Congress therefore left it to the Board to ascertain whether prescribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress. Whether or no practices may be deemed by Congress to affect interstate commerce is not to be determined by confining judgment to the quantitative effect of the activities immediately before the Board. Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce."

On the other hand, there is the case of

Federal Trade Commission v. Bunte, 312 U. S. 349 (1941). (Decided February 17, 1941.)

In this case, the Commission tried to prevent a candy manufacturer within a state from selling what was called "break and take" assortments, on the ground that this was an unfair method of competition. Mr. Justice Frankfurter pointed out that while this might affect commerce, it was not in commerce, as set forth in the Federal Trade Commission Act. He discusses the difference between the two Acts beginning at page 351, as follows:

"... When in order to protect interstate commerce Congress has regulated activities which in isolation are merely local, it has normally conveyed its purpose explicitly. See for example, National Labor Relations Act, §§2 (7), 9 (c), 10 (a), 49 Stat. 450, 453, 29 U. S. C. §§152 (7), 159 (c), 160 (a); Bituminous Coal Act, §4 A, 50 Stat. 83, 15 U. S. C. §834; Federal Employers' Liability Act §1, 35 Stat.

65, as amended, 53 Stat. 1404, 45 U. S. C. §51. To be sure, the construction of every such statute presents a unique problem in which words derive vitality from the aim and nature of the specific legislation. But bearing in mind that in ascertaining the scope of congressional legislation a due regard for a proper adjustment of the local and national interests in our federal scheme must always be in the background, we ought not to find in §5 radiations beyond the obvious meaning of language unless otherwise the purpose of the Act would be defeated. *Minnesota Rate Cases*, 230 U. S. 352, 398-412.

"That for a quarter century the Commission has made no such claim is a powerful indication that effective enforcement of the Trade Commission Act is not dependent on control over intrastate transactions. Authority actually granted by Congress of course cannot evaporate through lack of administrative exercise. But just as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred."
(Emphasis added.)

The fact that the Commission for many years has been restrained by the courts in its efforts to regulate every practice which might remotely affect commerce is a strong indication that the Commission does not have the power to bar everything which may remotely touch commerce, and is a clear indication that the courts do have power to restrain the Commission in the application of an unduly severe remedy.

For years the courts have been in the habit of modifying orders of The Federal Trade Commission. In the past the Commission has not sought to prevent

modification by mandatory rule of law but only to persuade the courts against it. This lack of objection is a strong indication of what the law is.

Petitioner believes that even if the use of the word "Alpacuna" is deceptive, the use of the words "Alpacuna, contains no vicuna" is not deceptive. It may be that in choosing a new mark or trade name today, the choice of such a slogan would be unwise. However, in view of the fact that "Alpacuna" has been used for fourteen years, with no evidence of deception, the use of the phrase "Alpacuna, contains no vicuna" could be objectionable only on the ground that it might set a bad example for others. In this way it might be stated to "tend to lead" to deception by others, but the jurisdiction of the Commission does not extend so far as to enjoin such practices, which in themselves, are inoffensive merely on the ground that they may set a bad example for others. Under the Federal Trade Commission Act, the practice must be an unfair or deceptive act in commerce. Petitioner, therefore, believes that the Commission has gone beyond its power in ordering the obliteration of a trade name merely because it believes that the practice of the past, if continued into the future, might become deceptive.

Apparently recognizing the difference, the Circuit Court of Appeals for the Ninth Circuit quite recently did modify the remedy applied by the Federal Trade Commission in a cease and desist order.

**Ultra-Violet Products, Inc. v. Federal Trade Commission, 143 Fed. (2d) 814 (1944)—C. C. A. 9.
(Decided June 30, 1944.)**

Here the question was about the extent to which the advertising of a ray lamp correctly represented its therapeutic powers. The Commission ordered the cessation of seven types of advertising. The court refused

to enforce two of the orders, affirmed four, and modified one. As to the latter, the court states (p. 817):

"Regarding the prohibition against advertising that the lamp 'normalizes the chemistry of the body, improves metabolism, or builds new tissues, except insofar as its use **may** result in the production of vitamin D,' we agree that it should be modified as requested by the petitioner to read to prohibit the statement that the lamp 'normalizes the chemistry of the body, improves metabolism, or builds new tissues, except insofar as such effects are related to the production of vitamin D resulting from the use of the lamp'." (Emphasis supplied.)

Thus, the court restricted the order to what was necessary to prevent untrue statements.

In the case of

Parke, Austin & Lipscomb v. Federal Trade Commission, 142 Fed. (2d) 437 (1944)—C. C. A. 2. (Decided April 19, 1944.)

Judge Chase states, as quoted in the opinion of the Circuit Court of Appeals in the present case (R. 901) states at page 441:

"The petitioners are standing upon much firmer ground when they insist that this paragraph in the order is needlessly severe in its sweeping requirement that the words 'Smithsonian Institution' must be eliminated from the corporate name of petitioner Smithsonian Institution Series, Inc. There may well be some alternative remedy less drastic but adequately effective which might satisfy the requirements of fairness and should be adopted. On this record, however, we cannot be sure that the Commission has abused its discretion in this respect, and only in that event should we interfere with its action."

The indication is that the court would have modified the order in case of an abuse of discretion. The Circuit Court of Appeals in the case at bar concludes its opinion as follows (R. 902):

"That discretion has been exercised to totally prohibit the use of the name 'Alpacuna' to the petitioner. Since the Commission has such power, we are unable, in view of the evidence, to say that the power has been abused in this instance, though under the same facts and circumstances, if we were still in control of the remedy, we would modify the order as above indicated."

Petitioner submits that it is an abuse of discretion to destroy an established trade name made valuable by many years of advertising where the addition of the words "contains no vicuna" will serve effectively to prevent the deception the Commission fears may, but as yet has not occurred.

The only issue of fact before the Commission was whether "Alpacuna" was deceptive. There was no question about whether "Alpacuna Contains no Vicuna" is deceptive. There is no evidence on this point. In the Ultra-Violet case, there was evidence that the advertising was partly true. The Circuit Court of Appeals refused to permit a blanket cease and desist order. So here, this Court may regard the question of the modified name as not supported by any evidence. If the Court takes that position, the cease and desist order should be modified to conform to the evidence.

Thus, this Court may either regard the Order as unreasonable and an abuse of discretion, or it may fairly regard it as wholly unsupported by evidence so far as designed to prevent the use of "Alpacuna. Contains no Vicuna."

The Federaal Trade Commission Act expressly provides that the appellate court "shall have power to make

and enter, upon the pleading, evidence, and proceedings set forth in such transcript a decree **affirming, modifying or setting aside** the order of the Commission, and enforcing the same to the extent that such order is affirmed * * *." (Emphasis added.)

**52 Stat. 111; 15 U. S. C. A. Sec. 45 (c), and
52 Stat. 111; 15 U. S. C. A. Sec. 45 (d).**

There seems to be no general idea among the Circuit Courts of Appeal that the decisions of this Court in Labor Board cases restrict the right of the Court to modify an order of the Federal Trade Commission. As stated in the Circuit Court of Appeals' opinion in this case, the Circuit Court of Appeals for the Second Circuit at first conceived it had this right, and now feels that it does not have the right to modify an order of the Federal Trade Commission. But even that court states in the Parke case that it would do so in case of an abuse of discretion. One of the earlier Second Circuit cases is

Establissemments Rigaud, Inc. v. Federal Trade Commission, 125 Fed. (2d) 590 (1942) (C. C. A. 2).

It appeared that a group of persons, most of whom were French, and lived in France, imported to this country ingredients from which they mixed perfumes in New York. They sold these perfumes under labels indicating the perfumes were imported. A cease and desist order issued which, among other things, prohibited the use of all French words on the label. On petition for review, the court stated as follows (page 591):

"We think the order is too broad. The proceeding against Rigaud and Fougere was calculated to correct abuses which at best were trifling and but for the broad discretion lodged in the Commission we should regard as hardly worth serious consideration. It must, however, be remembered that the ingredients of the perfumes were mainly French and that the

business to a great extent has been supervised by French directors and stockholders. It is notorious that French names are commonly used to describe perfumes and for some reason seem to be favorites with the trade. It is doubtless permissible to forbid the use of words which indicate a French origin and manufacture when *strictissimi juris* there is none, but we can see no reason for proscribing the use of all French words when designating the perfumes or for the rather fantastic requirement of the order that the price of retention must be an accompanying English translation. It is enough to insist upon the abandonment of the words 'Paris' or 'Paris, France' unless they are limited as in clause 1 of the order. We think the most the Commission should require is that Rigaud and Fougere cease and desist from the acts embraced in clauses 1 and 3. *Fioret Sales Co. Inc. v. Federal Trade Comm.* 2 *Circ.*, 100 F. 2d 358.

"The order should be modified by the elimination of clause 2. As thus modified, the order is confirmed and enforcement thereof is granted."

Such of the other Circuit Courts as have had occasion to modify an order of the Federal Trade Commission, have done so without any restraint.

Federal Trade Commission v. Mid West Mills, Inc.,
90 Fed. (2d) 723 (1937)—C. C. A. 7.

In this case, the Commission entered an Order directing the respondent to cease the use of its corporate name "Mid West Mills, Inc." on the ground that its use was likely to make purchasers of woven goods think they were buying from a manufacturer rather than from a jobber. The Circuit Court of Appeals for the Seventh Circuit felt that the name did not need to be destroyed, but could be rendered harmless by the addition of explanatory words.

At page 725, the court states:

"We are convinced that respondent may avoid any false impressions and implications arising from the use of the word 'Mills' if it uses on all its stationery, garment labels, tickets, invoices, and other printed matter, these words 'Jobbers and Converters, Not Mill Owners or Mill Operators.' There would then be no possibility of deception. Of course, these are not the only words which might be adopted. The Commission must in the first instance determine whether the words sufficiently convey the information that respondent neither owns nor operates a mill."

The Commission is now taking the position that qualifying words are not appropriate here because it is impossible to qualify a contradiction. The idea seems to be that anyone who from now on reads the terms "Alpacuna Contains no Vicuna" will first imply from the word "Alpacuna" that it contains Vicuna, and will then be confronted with the words "Contains no Vicuna." Thereupon, he will note the contradiction and will not be sure. Since no one is shown to have been misled by fourteen years' use of the unmodified mark, it is hard to believe the explanation would increase confusion. Petitioner is convinced that its request is reasonable. The court in the above case felt that it was proper for the Petitioner to use the word "Mills" in its name notwithstanding it was not a mill, provided it stated thereon these words:-

"Jobbers and Converters, Not Mill Owners or Mill Operators."

The same was true in the Royal Milling case, and another case to the same effect is as follows:

Federal Trade Commission v. Hires Turner Glass Co., 81 Fed. (2d) 362 (1935)—C. C. A. 3.

In this case, the respondent was in the habit of advertising its mirrors as "copper-backed." It appeared that these words had come to indicate to the trade mirrors backed by a sheet of copper electrolytically applied. The respondent applied its so-called copper back by painting thereon a mixture of shellac and powdered copper. The advertising was, therefore, regarded as deceptive. The Commission directed the respondent to stop using the term "copper-backed." The Circuit Court of Appeals for the Third Circuit affirmed the order. At page 364, Judge Thompson states:

"It may well be that, had this court been a fact-finding tribunal, it might have reached conclusions other than those reached by the petitioner. The petitioner, however, had before it ample evidence upon which to find that the terminology had acquired a secondary meaning, prior to its use by the respondent, and that the respondent's mirrors did not contain the essentials of genuine copper-back mirrors. Inasmuch as it is the duty of the Commission to determine the facts, it is our duty to sustain the Commission if there is any substantial evidence upon which its findings are based."

Thereafter, a petition for modification was filed, and the Commission's order was modified. At page 364, Judge Thompson states further:

"The Commission's cease and desist order is accordingly modified by adding thereto the following: 'Provided, however, that the respondent may use such designations as are accompanied by qualifying terms which clearly signify that the copper backing on its mirrors is not electrolytically applied'."

The court below thus in 1935 felt that it had the right to modify a destructive order of the Commission.

Dietsgen Co. v. Federal Trade Commission, 142 Fed. (2d) 321 (1944)—C. C. A. 7. (Decided May 3, 1944.)

In this case an order of the Federal Trade Commission against certain price fixing practices was approved by the court upon petition for review. The report of the case indicates that the opinion of the court was filed February 29, 1944. The reporter then states: "As Modified on Denial of Rehearing May 3, 1944."

The closing paragraph of the court's opinion reads as follows (page 332):

"The order of the Commission is approved. Counsel for respondent will draw a proposed order and submit it to petitioners, pursuant to the rule of this court respecting the drafting of orders in cases where appeal is taken from a ruling of an Administrative Board. In such order, respondent is directed to modify its order and make it clear that the cease and desist order enjoins petitioners from doing any of the acts or things condemned pursuant to any agreement, combination or conspiracy here found to exist."

Even the Circuit Court for the Second Circuit has recently modified an order of the Federal Trade Commission, notwithstanding its previous announcement in the Herzfeld case (140 Fed. 2d 207) (cited by the court below in its opinion R. 899) that it had no authority to do so.

Gelb v. Federal Trade Commission, 144 Fed. (2d) 580 (1944)—C. C. A. 2. (Decided August 14, 1944.)

The complaint of the Commission in this case had to do with advertising a preparation for shampooing and coloring the hair. A cease and desist order was issued, paragraph 2 of which reads as follows:

"(2) Representing that said preparations recondition the hair, or restore the natural or youthful color of the hair."

In affirming the Order, the Circuit Court of Appeals for the Second Circuit stated in part as follows (p. 583):

"Clause (2) of the order is modified by omitting the words 'recondition the hair or'; as so modified the order is affirmed."

This action is doubtless not to be considered in conflict with the position previously taken by the same court, that it had no power to modify the orders of the Commission. It probably based its modification of the order in this case on the claim that the evidence did not support the Commission's finding that the preparation would not "recondition the hair." While it is possible to explain the case upon the theory that there was no evidence to support the finding, nevertheless it is worthy of note that the court did modify the order of the Commission. In the case at bar, it may also be noted that there is no evidence that the addition of the words "Contains no Vicuna" will be ineffective here. If there is no such evidence, there likewise is no basis for abruptly ordering the respondent to cease and desist altogether from using the word "Alpacuna."

Lekas & Drivas v. Federal Trade Commission, 145 Fed. (2d) 976 (1944)—C. C. A. 2. (Decided November 30, 1944.)

In this case the Commission attacked certain advertising relating to olive oil which was stated to have some slight value as a laxative. The Commission ordered such advertisement to stop. An expert witness had stated that the value of olive oil as a laxative was "Slight, if any." This, the Circuit Court of Appeals for the Second Circuit,

held was not sufficient to support the order which wholly enjoined advertising on that subject. At page 976, the court states:

"For this reason we think that the order: Article I (a), should be supplemented by this suffix: 'except a possible slight value as a laxative.'

"Order modified as above indicated, and, as modified, affirmed."

It is respectfully submitted that the view of the Circuit Court of Appeals, that it does not have power to modify an unreasonable order of the Federal Trade Commission is in conflict with the decision of this Court in the Royal Milling Company case, and is in conflict with all of the foregoing decisions in the other Circuit Courts of Appeal (Second, Seventh and Ninth). This Court may properly, therefore, take jurisdiction of this case and grant the petition. Furthermore, it is of great importance that this Court should re-affirm the Royal Milling Company case in view of the expressions by the Second Circuit Court of Appeals (since disregarded) and by the Circuit Court of Appeals for the Third Circuit in this case.

In addition, it is respectfully submitted that no Commission ought to have the power arbitrarily to destroy a trade name in an unreasonable manner—and doing so is an unconstitutional assumption of power.

It is submitted that the petition should be granted in order that these questions may be fully argued.

Respectfully submitted,

ROBERT T. McCracken,

LEO WEINROTT,

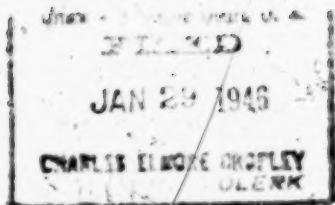
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FILE COPY



IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 605.

JACOB SIEGEL COMPANY,
Petitioner,

v.

FEDERAL TRADE COMMISSION.

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD
CIRCUIT, NO. 8407.**

BRIEF FOR PETITIONER.

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BRIEF FOR PETITIONER.

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE UNITED
STATES:

Opinion Below.

The opinion of the Circuit Court of Appeals is
reported at 150 Fed. (2d) 751 and is printed in the Record
at p. 891.

Basis of Jurisdiction.

Jurisdiction is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938. The opinion of the Circuit Court of Appeals for the Third Circuit was filed November 30, 1944. A Petition for Rehearing was granted March 6, 1945, and the court's original opinion confirmed in a final opinion filed September 20, 1945. An enforcement order was entered October 9, 1945, and the enforcement thereof stayed to afford time for presentation of the issue to this Court. Certiorari was granted January 2, 1946.

Questions Presented.

(1) Whether a Circuit Court of Appeals may modify an order of the Federal Trade Commission which it believes harsh and unreasonable, as was held proper in the case of **Federal Trade Commission v. Royal Milling Co.**, 288 U. S. 212 (1933), and **Federal Trade Commission v. Hires Turner Glass Co.**, 81 Fed. (2d) 362 (1936) (C. C. A. 3).

(2) Whether this Court has the power, asserted in the **Royal Milling case**, to modify an order of the Federal Trade Commission which it may believe harsh and unreasonable.

Statement of the Case.

This is a petition to review a cease and desist order issued by the Federal Trade Commission directing the Petitioner to stop using the word "Alpacuna" on overcoats on the ground that the word is a misleading representation that the coats contain the hair of an animal called the "Vicuna" found only in the region of the Andes Mountains of South America. The coats do contain Alpaca fibre to the extent of about fifty per cent, and the name is a fanciful one invented by the Petitioner years ago by combining the words "Alpaca" and "una" signifying exclusiveness.

The original complaint was filed on May 6, 1938. It charged the Petitioner with issuing samples, books and advertising copy, representing that the garments were made of all wool and hair fabric. There was no complaint about the use of the name "Alpacuna."

A settlement of the controversy was tentatively agreed upon between counsel for the parties, but was finally ignored by the Commission. Its counsel was changed for some reason unknown to the Petitioner and an amended complaint issued. This complaint contained additional allegations, including a complaint that the use of the term "Alpacuna" constitutes (R. 6a) "a representation by said respondent (Petitioner here) . . . that said fabric is composed entirely of the fur, wool or hair of the Alpaca and the Vicuna," and that it gave unscrupulous retailers means of increasing their sales "by representing that said overcoats and topcoats are all wool and composed solely of the fur, wool and hair of the Alpaca and Vicuna." A further complaint was made as to certain advertising copy which was claimed to represent that "Alpacuna" fabrics contain "the foreign fur, hair or wool of the Angora goat from the plains of Turkestan."

The Petitioner again filed an answer denying the additional complaints and averring that the name "Alpacuna" was a coined trade name and did not constitute a representation that the "Alpacuna" fabrics were composed of alpaca and vicuna and that, accordingly, it did not place in the hands of unscrupulous retailers a means of misrepresenting the coats.

The case then proceeded to hearing and after counsel for the Commission had conducted a long series of hearings in Philadelphia, New York, Baltimore and Washington he filed a further amended complaint. In this third complaint charges with respect to the term "Alpacuna" were modified and it was charged that the term represented to the public that the fabric is (R. 280a) "com-

posed entirely, or at least of a substantial quantity of the fur, wool or hair of the alpaca and vicuna." A further charge was made (R. 281a) that the slogan "There Is Only One Alpacuna Coat" was misleading when applied to both Petitioner's topcoats and overcoats, which were not of identical fibre content because of the cotton back on the heavy coat. Answer was again filed by Petitioner substantially denying the additional charges made. Petitioner was then permitted to put in its case. Testimony was taken before the Trial Examiner who filed his report without making any recommendation. Exceptions were taken and argued before the Commission with the result that a majority of the Commission endorsed an opinion directing the cease and desist order complained of. Commissioner Freer dissented (R. 655a).

° The basic facts are that the Petitioner makes two overcoats, one a heavy coat, and the other a topcoat. They differ in character only that the heavy winter coat has a cotton back. On the topcoat, the cotton back is omitted. The face fabric was composed of 50% alpaca, and 10% mohair and 40% wool. The face yarns comprised about 70% of the total fabric and the cotton back 30%.

The alpaca used in the fabric is known in the trade as Araqueppa alpaca. It is the only alpaca which can be obtained commercially and contains between 10% and 15% guanaco (hair from another small animal) (R. 539a, 540a, 541a; Petitioner's Ex. A with Answer, 17a). The mohair used in the fabric is obtained from Texas. The Angora goats of Texas produce as fine a mohair as the goats from Asia Minor (551a, 552a).

The fabric was designed for overcoats and when Petitioner placed the overcoats on the market it introduced them and sold them under the Company's trade name "Alpacuna," which was duly registered in the Patent Office as a trade-mark for "Men's topcoats, overcoats and suits in Class 39, clothing."

After the Commission issued its cease and desist order directing the Petitioner to stop using the trade name "Alpacuna", a petition for review was taken to the Circuit Court of Appeals. At the argument before the Circuit Court of Appeals, it developed that the Commission meant exactly what its order said. It proposed to stop completely the use of the trade name "Alpacuna" and it would not permit any modification of the word such as the addition of the words "contains no vicuna."

The Circuit Court of Appeals affirmed with considerable reluctance, as evidenced by the following excerpt from its opinion:

"Although we sustain the Commission on its finding as to the name because of substantial evidence supporting that finding, we think strongly that **the order is far too harsh**. It destroys a widely and favorably known trade name, in existence for fourteen years. It cause serious injury to the petitioner and its retail outlets. The infraction, as the case now stands, is slight and could be cured by **simple qualifying language**. We could dispose of the problem by modifying the Commission's order as suggested, if the practice as outlined in Federal Trade Commission v. Royal Milling Co., 288 U. S. 212 and Federal Trade Commission v. Hires Turner Glass Co., *supra*, a Third Circuit case, was still the law" (R. 889). (Emphasis supplied.)

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Thereupon the Petitioner changed its labels to conform with the copies attached later on in this brief. The labels now used show in conspicuous type beneath the word "Alpacuna" the words "contains no vicuna." A petition for rehearing was filed with the Circuit Court of Appeals. In granting this petition, the court entered the following order:

"After due consideration, the Petition for Rehearing in the above entitled case is hereby granted, said rehearing to be restricted to possible modification of the Federal Trade Commission's order" (R. ~~915~~).

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Thereafter, the Circuit Court of Appeals on September 20, 1945, filed its opinion upon rehearing, as follows:

"After carefully considering the question of possible modification of the Federal Trade Commission's order, we feel compelled to adhere to our original decision which we confirm" (R. ~~916~~).

905

At the argument on rehearing, Petitioner presented to the Circuit Court of Appeals the modified labels referred to and asked that the enforcement order be modified to permit the use of this modified label. The court would have been entirely willing to permit this modification, but counsel for the Commission refused to agree.

The enforcement order was entered without modification, and Petitioner filed a petition for certiorari which was granted by this Court January 2, 1946.

Specifications of Errors Urged.

The Petitioner urges the following errors:

1. The court below erred in holding that it does not have the power to modify a remedy prescribed in a Federal Trade Commission cease and desist order which it believes to be unnecessarily harsh and destructive.

2. The court below erred in failing to hold the order of the Commission unconstitutional and void insofar as it unreasonably and unnecessarily destroys a valuable trade name.

Summary of Argument.

The name "Alpacuna" has never deceived anybody. There is no finding that it has. The Commission has found it may in the future be deceptive because some experts brought in by it as witnesses stated they would interpret the name to mean the garment contained some vicuna fibre notwithstanding they knew it did not. Based on its finding of possible deception, resting on this evidence, the Commission ordered the destruction of this trade name and refuses to permit any neutralizing language such as "contains no vicuna." The Circuit Court of Appeals has concluded that it is without power to modify the remedy prescribed by the Commission.

The latest Federal Trade Commission case is

Federal Trade Commission v. Royal Milling Company, 288 U. S. 212 (1933).

This case has never been expressly overruled, but the Court of Appeals regards it as having been overruled by application by the case of

Mado Photo Supply Corporation v. National Labor Relations Board, 321 U. S. 678 (1944).

Petitioner does not believe the Federal Trade Commission has unlimited power to impose an unreasonable remedy, and asks this Court to permit the Circuit Court of Appeals to modify the cease and desist order as it has announced it would do if it had the power or else to enter an order of modification in these proceedings.

This Court has recently directed modification of an order of the Labor Board in the case of

May Department Stores v. National Labor Relations Board. Decided December 10, 1945.

That case is regarded as negating the rule relied upon below that a court has no power to modify a remedy imposed by an administrative agency.

Argument.

The cease and desist order directs the Petitioner not to use the name "Alpacuna" notwithstanding it has used that name for fourteen years without evidence of deception to any customer. In its Opinion, the Circuit Court of Appeals states (R. 898):

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"Although we sustain the Commission on its findings as to the name because of substantial evidence supporting that finding, we think strongly that the order is far too harsh. It destroys a widely and favorably known trade name, in existence for fourteen years. It causes serious injury to the petitioner and its retail outlets. The infraction, as the case now stands, is slight and could be cured by simple qualifying language. We could dispose of the problem by modifying the Commission's order as suggested if the practice as outlined in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212 and *Federal Trade Commission v. Hires Turner Glass Co.*, *supra*, a Third Circuit Case, was still the law." (Emphasis supplied)

The court then proceeds to state that it would dispose of the problem by modifying the Commission's order as suggested were it not for the fact that the court feels it has no power to do so. Therefore, the court concludes its opinion by affirming the order of the Federal Trade Commission, with which it thus disagrees.

Petitioner believes the court has the power to modify the order of the Commission along the lines indicated on either of two theories--First, the order is exceedingly harsh, and is, therefore, an abuse of discretion; and Secondly, there is no substantial evidence that the proposed qualifying words "contains no vicuna" would be ineffective. Therefore, the order is to that extent not

supported by evidence. The latest case in this Court on the subject dealing with the Federal Trade Commission is

Federal Trade Commission v. Royal Milling Company, 288 U. S. 212 (1933).

In this case, the Commission entered a cease and desist order, and this Court stated (p. 217):

"Although we sustain the commission in its findings and conclusions . . . we think under the circumstances the commission went too far in ordering what amounts to a suppression of the trade names."

This Court thereupon reversed the Circuit Court of Appeals, and sent the case back for the entry of a modified order less drastic than the destruction of the trade name involved in that case. Explanatory words were added to a name containing the words "Milling Company" to show the Company did not manufacture. This is the last case in this Court having to do with the subject-matter of trade names before the Federal Trade Commission.

The Circuit Court of Appeals was aware of the Royal Milling Company case, but considered it overruled by later cases in this Court dealing with the review of orders of the National Labor Relations Board, particularly the Medo case referred to below.

Petitioner does not believe the Court intended to announce so sweeping a result in the Medo case.

Medo Photo-Supply Corp. v. National Labor Relations Board, 321 U. S. 678 (1944).

In that case the Medo Corporation recognized a labor union as bargaining representative for its employees. Later the employees stated to the employer that they were

dissatisfied with the union and would abandon it if they were given a wage increase by independent negotiation. The increase was granted and the employees notified the union not to represent it.

Following an investigation by the Board, a cease and desist order was entered based on findings that the employer had violated Section 8 (1) and (5) of the Act, by interfering with the exercise of the right of the employees to bargain collectively. The Circuit Court of Appeals for the Second Circuit sustained the order, and on Certiorari, this Court affirmed. Chief Justice Stone in a footnote beginning on page 681 states as follows:

"It has now long been settled that findings of the Board, as with those of other administrative agencies, are conclusive upon reviewing courts when supported by evidence, that the weighing of conflicting evidence is for the Board and not for the courts, that the inferences from the evidence are to be drawn by the Board and not by the courts, save only as questions of law are raised and that upon such questions of law, the experienced judgment of the Board is entitled to great weight."

Following the Medo case came the case of Herzfeld v. Federal Trade Commission, 140 Fed. (2d) 207 (1944) in the Circuit Court of Appeals for the Second Circuit. In that case, Judge Learned Hand, at page 208, states as follows:

"* * * It does not follow that the relief granted should extend to an entire suppression of the word, 'Mills'; and, if we thought ourselves free to control the remedy, we might be satisfied to modify the order by merely adding some such suffix as the Supreme Court thought adequate in Federal Trade Commission v. Royal Milling Co."

and at page 209:

"However, since *Federal Trade Commission v. Royal Milling Co.*, *supra*, 288 U. S., 212, 53 S. Ct. 335, 77 L. Ed. 706, was decided, the Supreme Court has as much circumscribed our powers to review the decisions of administrative tribunals in point of remedy, as they have always been circumscribed in the review of facts."

The Circuit Court of Appeals for the Third Circuit in this case adopts the above quotation (R. 899-901). It continues at (R. ~~901~~):

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"It is evident, therefore, that the discretion as to the remedy in such controversy as this has now been vested in the Federal Trade Commission. That discretion has been exercised to totally prohibit the use of the name 'Alpacuna' to the petitioner. Since the Commission has such power, we are unable, in view of the evidence, to say that the power has been abused in this instance, though under the same facts and circumstances, if we were still in control of the remedy, we would modify the order as above indicated."

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After Reargument, the Court states (R. ~~916~~):

"After carefully ~~considering~~ the question of possible modification of the Federal Trade Commission's order, we feel compelled to adhere to our original decision, which we confirm."

The Circuit Court of Appeals for the Third Circuit thus feels that it is without power to modify a remedy which it believes "far too harsh." The only authority back of this position is found in the footnote on page 681 of the Opinion in the Medo case by this Court. That footnote was in a labor-board case and referred to findings only, and not to remedy.

This Court has nowhere announced that the decision

of an administrative agency, even the National Labor Relations Board, is final as to the remedy prescribed. In labor board cases, there has been a reluctance to modify the remedy. This is understandable in view of the great changes taking place in the labor field. There is, however, no such great change taking place in the use of trade names. Even in review of the labor board decisions, this Court has modified the remedy prescribed. Some of these decisions are cited in the Brief for the *Amicus Curiae* in support of the Petition for Writ of Certiorari.

Most recently in the case of

May Department Stores Company v. National Labor Relations Board, U. S. Sup. Ct., Decided December 10, 1945.

this Court was apparently unanimous in its feeling that a remedy prescribed by the National Labor Relations Board should be modified, and it was modified. The Court was in disagreement as to what the modification should be, but it seems to have been agreed by all members of the Court that there should be some modification.

In that case it appeared that May Department Store had approximately five thousand employees. In one department, there were about thirty employees who had been effectively organized by a C. I. O. Union. The rest of the store had not been organized. The National Labor Relations Board ordered an election in the department of thirty employees, and the C. I. O. Union was chosen. The employer could not appeal from this action, but it declined to deal with the Union. Shortly afterwards the Company granted an increase to all employees, including the unionized department, and made application to the War Labor Board for approval, stating in its application that if the Union objected, the application should be amended to exclude the thirty employees.

The Union made application for an injunctive order. The Board found that there were two unfair labor practices, (1), refusal to bargain with the Union; and (2) the

store-wide salary increase. A cease and desist order was entered in general terms: (1) enjoining the Company from refusing to bargain collectively; and (2) from in any manner interfering with the employees in the exercise of their right to join the Union. This enforcement order was affirmed by the Circuit Court of Appeals for the Eighth Circuit, and Certiorari granted.

It appeared as a fact that the grant of the wage increase was not for the purpose of injuring the Union or the small number of persons who belonged to it, but the refusal to bargain with the Union was considered a mistake of the Company, for the consequences of which it must suffer.

In an Opinion by Mr. Justice Reed, it was decided that the restraining order should be limited to the acts which the Company had performed—that a general restraining order was not necessary in this case. The Court makes the following statement:

“The test of the proper scope of a cease and desist order is whether the Board might have reasonably concluded from the evidence that such an order was necessary to prevent the employer before it ‘from engaging in any unfair labor practice affecting commerce.’ Section 10 (a). Equity has long been accustomed in other fields to reach conclusions as to the scope of orders which are necessary to prevent interferences with the rights of those who seek the courts’ protection. Injunctions in broad terms are granted even in acts of the widest content, when the court deems them essential to accomplish the purposes of the act. We think that the Board has the same power to determine the needed scope of cease and desist orders under the National Labor Relations Act that courts have, when authorized to issue injunctions, in other litigation.

“That power of the Board is subject to review under Section 10. While the Board has been delegated initially the exclusive authority to prevent unfair

labor practices, courts, which are called upon to enforce such orders by their own decrees, may examine its scope to see whether on the evidence they go so beyond the authority of the Board as to require modification as a matter of law before enforcement. Section 10 (a) and (e). The Express Publishing Company case declared:

“To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past. P. 437.

“We think that, in the circumstances of this proceeding, although there is a violation of Section 8 (1) as well as 8 (5), the violation of 8 (1) is so intertwined with the refusal to bargain with a unit asserted to be certified improperly that without a clear determination by the Board of an attitude of opposition to the purposes of the Act to protect the rights of employees generally, the **decree need not enjoin Company actions which are not determined by the Board to be so motivated.**” (Emphasis added.)

Mr. Justice Rutledge wrote a separate Opinion “concurring in part”, in which the Chief Justice and Mr. Justice Frankfurter joined. This Opinion states:

“I think only one unfair labor practice was shown, namely, refusal to bargain; and for that reason **I think the Board's order must be modified** to eliminate the restraints based on its finding of violation of §8 (1) as the Express Publishing Company case, 312 U. S. 426, requires in such a situation.”

He also states:

“It is important for the administration of the Act to know whether the Board is to be free to adapt the remedy to fit the evil it has found to exist, as the

statute commands, §10 (c); or, on the contrary, its remedy thus adapted may be stricken down or modified although the finding which justifies it is approved. That in my judgment goes beyond correction of abuse of the Board's discretion and substitutes the Court's judgment for the Board's in devising the appropriate remedy.

"For this reason it becomes important to state the different reasons why I think the order should be modified to eliminate any restraint based upon the finding of violation of §8 (1)."

It is thus clear from both opinions that all the members of the Court involved felt there should be some modification with respect to the remedy. The order of the Board, in other words, went too far, and this Court refused to condone a sweeping injunctive decree in a case where the employer had performed a single act designed only fairly to raise a question which it desired to litigate. The employer had not unnecessarily gone out of its way to injure the Union. On the merits the employer lost its case, but this Court felt a punitive order going beyond the scope of the offense committed was uncalled for.

There are many cases where the rulings of other administrative bodies have been modified with respect to the remedy. This has been particularly true in the case of the Interstate Commerce Commission.

American Trucking Associations, Inc. et al. v. United States, 65 Sup. Ct. 1499 (1945); 18 L. Ed. 1463.

This case involved the granting of a certificate of public convenience and necessity to a railroad-owned motor carrier for services auxiliary to the railroad's service. The Commission granted the certificate. The special District Court refused to set aside the order. On appeal, this decision was reversed. At page 1468 of the Lawyers Edition, Mr. Justice Reed states:

"It is not enough that the railroad's motor operations are found by the Commission to be of a different character from over-the-road motor operations because they are integrated with railroad operation. The Commission must also consider the disadvantage to the public of a serious impairment of the non-rail motor carriers. Those affected are entitled to fully develop the bearing of the proposals on the transportation agencies which are involved. The discretion of the Commission should be exercised after consideration of all relevant information."

This decision reversed the action of the Commission in deciding what standard should be applied in granting or refusing a certificate.

Barrett Line, Inc. v. United States, 65 Sup. Ct. 1504 (1945); 18 L. Ed. 1405.

In this case the Interstate Commerce Commission denied a permit to act as a contract water carrier, and the three judge District Court dismissed the Complaint which sought review of that order. On appeal, this decision was affirmed as to operations other than chartering, and as to them, it was reversed and remanded for further proceedings. Four justices dissented. Nevertheless, the effect of the decision was in disagreement with the decision of the Commission.

In the recent case of

The John Kelley Company v. Commissioner of Internal Revenue, Decided January 7, 1946,

this Court reviews the subject of finality of decisions of the Tax Court. The Opinion goes to some length in tracing the history of the Tax Court, and refers to the Congressional Record to show an intention that decisions of the Tax Court should be largely final. The quotation from the Congressional Record refers to a right of appeal: "as, for instance, in the case of orders of the Federal

Trade Commission, and orders of the Secretary of Agriculture under the packers and stockyards act."

Following this quotation, this Court states in footnote 7:

"Since the Federal Trade Commission and the Packers and Stockyards Acts differ as to the finality upon review of the determinations of the respective agencies * * * the reference to the Commission and to the Act was to show the choice of a circuit court of appeals for judicial review and was not intended to suggest the adoption for the Tax Court review of any standard of scope of review embodied in either Act."

This is a recent recognition by this Court of the Petitioner's contention that orders of the Federal Trade Commission were not intended to have the finality in matters of remedy which might be accorded in the case of the Tax Court. There is similar sound Congressional reason for this position with respect to the Federal Trade Commission because after the Royal Milling Company case, in which ~~the~~ Court did modify a remedy prescribed by the Commission, the Federal Trade Commission Act was amended without any further limitation of the jurisdiction of the courts on appeal.

Petitioner believes that there is a stronger purpose to be served in labor relations cases, as well as different statutory provisions prescribing the review of the two types of administrative cases.

To begin with, labor relation cases often require supervision. In other words, an employer is required by order to recognize or deal with a particular Union, or not to recognize or deal with it, in his daily contact with his employees. Questions of administration of the orders constantly come up. There are sometimes elections to be held and supervised by the Board. Seldom will a mere cease and desist order suffice. Therefore, in labor cases

this Court has been reluctant to interfere with the methods adopted by the Board. Presumably, it would do so if those orders violated some provision of the Constitution, or perhaps some provision of a statute.

Suppose, for instance, the Labor Relations Board should order the president of a corporation employer or the leader of an insurgent Union, shot at sunrise. No jury trial having been held, nor indictment found, it is hard to believe this Court would not say such an order was invalid, notwithstanding the Board's opinion as to the necessity for such action to accomplish labor representation in that industry.

This Court, doubtless, would say that the order was invalid because it bore no true relation to the object to be accomplished. It might say the order directed a desirable result, but was invalid because prohibited by Constitutional restriction.

The Petitioner believes this case is such a type. The object to be accomplished is the prevention of public deception or misbranding. The Act itself sets forth the policy as follows:

Act of September 26, 1914, c. 311, Sec. 5 38 Stat. 719; 15 U. S. C. A. 45, as amended

"The Commission is hereby empowered and directed to prevent persons * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

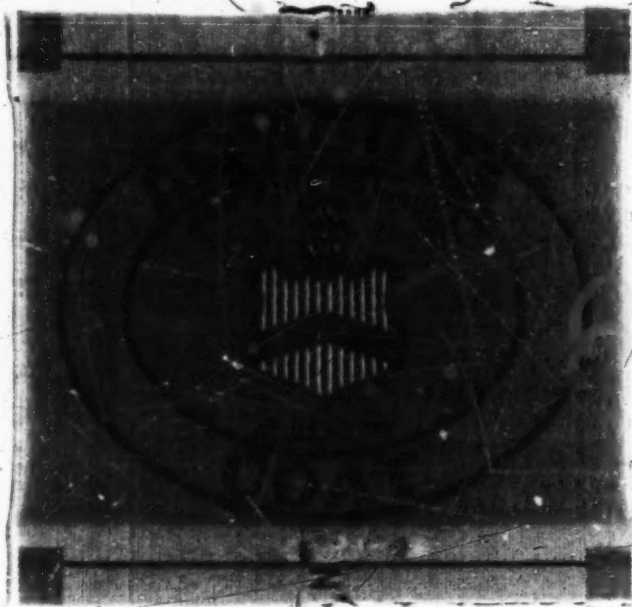
There seems to be no doubt that the use of the word "Alpacuna" upon a garment made of animal fibres is not a wrong in and of itself. The complaint of the Commission goes no further than to say that the use of the word on a garment containing alpaca, but not vicuna, is wrong because tending to be deceptive. The alleged deception is considered to lie in the connotation supposed to

reside in the word "Alpacuna"—that the garment contains vicuna fibres. Vicuna fibre is present only in minute proportions, and quite unintentionally.

Petitioner believes that the word "Alpacuna" is not an evil word, *per se*. Such deception as the Commission charges arises only by inference. No one ever was deceived. The only evidence to support the charge of deception is testimony by **experts** that they might be deceived, but weren't.

Thus, it is factually clear in this case that the only wrong to be cured is the supposed representation that vicuna fibre is present, when, in fact, it is not. Petitioner believes a direct statement on the label and immediately under Alpacuna "contains no vicuna" in conspicuous type would effectively ~~negative any import the mark might carry to the contrary.~~

Since the opinion of the Circuit Court of Appeals was handed down November 30, 1944, Petitioner has devised and is using new labels showing the name prominently modified: "Alpacuna, contains no vicuna." Samples of these labels are as follows:



ALPACUNA OVERCOAT

REG. U.S. PAT. OFF.

CONTAINS NO VICUNA**CONTENTS:**

FACE: 60% ALPACA & MOHAIR

40% VIRGIN WOOL

BACK: 100% LONG STAPLE COTTON

FACE CONSTITUTES 60% OF

FABRIC AND BACK 32%

DISTRIBUTED BY

MFR. 278

ALPACUNA TOPCOAT

REG. U.S. PAT. OFF.

CONTAINS NO VICUNA**MFR. No. 278**

CONTENTS: 60% ALPACA & MOHAIR

40% VIRGIN WOOL

DISTRIBUTED BY

The statement of fibre content is now required by the Wool Products Labeling Act; 54 Stat. 1128; 15 U. S. C. A. sec. 68.

The destruction of the mark goes beyond any necessary restriction. Destruction of the mark will, of course, be completely effective;—the liquidation of the Jacob Siegel Company would also be effective. Petitioner believes that any administrative remedy not reasonably limited to the object directed to be achieved by statute is a destruction of property and unconstitutional.

The Petitioner, therefore, respectfully reiterates that it believes this Court and the Circuit Court of Appeals have authority to limit the remedy to what is fairly related to the object to be accomplished, and if need be, to modify the administrative order. The Royal Milling case so holds.

Petitioner believes that even if the use of the word "Alpacuna" is deceptive, the use of the words, "Alpacuna, contains no vicuna" is not deceptive. It may be that in choosing a new mark or trade name today, the choice of such a slogan would be unwise. However, in view of the fact that "Alpacuna" has been used for fourteen years, with no evidence of deception, the use

of the phrase "Alpacuna, contains no vicuna" could be objectionable only on the ground that it might set a bad example for others. In this way it might be stated to "tend to lead" to deception by others. But the jurisdiction of the Commission does not extend so far as to enjoin such practices, which in themselves, are inoffensive merely on the ground that they may set a bad example for others. Under the Federal Trade Commission Act, the practice must be an unfair or deceptive act in commerce. Petitioner, therefore, believes that the Commission has gone beyond its power in ordering the obliteration of a trade name merely because it believes that the practice of the past, if continued into the future, might become deceptive.

Apparently recognizing the difference, the Circuit Court of Appeals for the Ninth Circuit quite recently did modify the remedy applied by the Federal Trade Commission in a cease and desist order.

Ultra-Violet Products, Inc. v. Federal Trade Commission, 143 Fed. (2d) 814 (1944)—C. C. A. 9. (Decided June 30, 1944.)

Here the question was about the extent to which the advertising of a ray lamp correctly represented its therapeutic powers. The Commission ordered the cessation of seven types of advertising. The court refused to enforce two of the orders, affirmed four, and modified one. As to the latter, the court states (p. 817):

"Regarding the prohibition against advertising that the lamp 'normalizes the chemistry of the body, improves metabolism, or builds new tissues, except insofar as its use may result in the production of vitamin D,' we agree that it should be modified as requested by the petitioner to read to prohibit the statement that the lamp 'normalizes the chemistry of the body, improves metabolism, or builds new

tissues, except insofar as such effects are related to the production of vitamin D resulting from the use of the lamp'." (Emphasis supplied.)

Thus, the Court restricted the order to what was necessary to prevent untrue statements.

In the case of

Parke, Austin & Lipscomb v. Federal Trade Commission, 142 Fed. (2d) 437 (1944)—C. C. A. 2. (Decided April 19, 1944.)

Judge Chase states, as quoted in the opinion of the Circuit Court of Appeals in the present case (R. 901) at page 441:

"The petitioners are standing upon much firmer ground when they insist that this paragraph in the order is needlessly severe in its sweeping requirement that the words 'Smithsonian Institution' must be eliminated from the corporate name of petitioner Smithsonian Institution Series, Inc. There may well be some alternative remedy less drastic but adequately effective which might satisfy the requirements of fairness and should be adopted. On this record, however, we cannot be sure that the Commission has abused its discretion in this respect, and only in that event should we interfere with its action."

The indication is that the court would have modified the order in case of an abuse of discretion. The Circuit Court of Appeals in the case at bar concludes its opinion as follows (R. 902):

"That discretion has been exercised to totally prohibit the use of the name 'Alpacuna' to the petitioner. Since the Commission has such power, we are unable, in view of the evidence, to say that the power has been abused in this instance, though under

the same facts and circumstances, if we were still in control of the remedy, we would modify the order as above indicated."

Petitioner submits that it is an abuse of discretion to destroy an established trade name made valuable by many years of advertising where the addition of the words "contains no vicuna" will serve effectively to prevent the deception the Commission fears may, but as yet has not occurred.

The only issue of fact before the Commission was whether "Alpacuna" was deceptive. There was no question about whether "Alpacuna Contains no Vicuna" is deceptive. There is no evidence on this point. In the Ultra-Violet case, there was evidence that the advertising was partly true. The Circuit Court of Appeals refused to permit a blanket cease and desist order. So did this Court recently in the May case with a Labor Board order. So here, this Court may regard the question of the modified name as not supported by any evidence. If the Court takes that position, the cease and desist order should be modified to conform to the evidence.

Thus, this Court may either regard the Order as unreasonable and an abuse of discretion, or it may fairly regard it as wholly unsupported by evidence so far as designed to prevent the use of "Alpacuna, Contains no Vicuna."

The Federal Trade Commission Act expressly provides that the appellate court "shall have power to make and enter, upon the pleading, evidence, and proceedings set forth in such transcript a decree **affirming, modifying or setting aside** the order of the Commission, and enforcing the same to the extent that such order is affirmed * * *." (Emphasis added.)

52 Stat. 111; 15 U. S. C. A. Sec. 45 (c), and (d).

There seems to be no general idea among the Circuit Courts of Appeal that the decisions of this Court in Labor

Board cases restrict the right of the Court to modify an order of the Federal Trade Commission. As stated in the Circuit Court of Appeals' opinion in this case, the Circuit Court of Appeals for the Second Circuit at first conceived it had this right, and now feels that it does not have the right to modify an order of the Federal Trade Commission. But even that court states in the Parke case that it would do so in case of an abuse of discretion. One of the earlier Second Circuit cases is

Etalissements Rigaud, Inc. v. Federal Trade Commission, 125 Fed. (2d) 590 (1942) (C. C. A. 2).

It appeared that a group of persons, most of whom were French, and lived in France, imported to this country ingredients from which they mixed perfumes in New York. They sold these perfumes under labels indicating the perfumes were imported. A cease and desist order issued which, among other things, prohibited the use of French words on the label. On petition for review, the court stated as follows (page 591):

"We think the order is too broad. The proceeding against Rigaud and Fougere was calculated to correct abuses which at best were trifling and but for the broad discretion lodged in the Commission we should regard as hardly worth serious consideration. It must, however, be remembered that the ingredients of the perfumes were mainly French and that the business to a great extent has been supervised by French directors and stockholders. It is notorious that French names are commonly used to describe perfumes and for some reason seem to be favorites with the trade. It is doubtless permissible to forbid the use of words which indicate a French origin and manufacture when *strictissimi juris* there is none, but we can see no reason for proscribing the use of all French words when designating the perfumes or for the rather fantastic requirement of the order that the

price of retention must be an accompanying English translation. It is enough to insist upon the abandonment of the words 'Paris' or 'Paris, France' unless they are limited as in clause 1 of the order. We think the most the Commission should require is that Rigaud and Fougere cease and desist from the acts embraced in clauses 1 and 3. *Fioret Sales Co. Inc. v. Federal Trade Comm.* 2 Circ., 100 F. 2d 358.

"The order should be modified by the elimination of clause 2. As thus modified, the order is confirmed and enforcement thereof is granted."

Such of the other Circuit Courts as have had occasion to modify an order of the Federal Trade Commission, have done so without any restraint.

**Federal Trade Commission v. Mid West Mills, Inc.,
90 Fed. (2d) 723 (1937)—C. C. A. 7.**

In this case, the Commission entered an Order directing the respondent to cease the use of its corporate name "Mid West Mills, Inc." on the ground that its use was likely to make purchasers of woven goods think they were buying from a manufacturer rather than from a jobber. The Circuit Court of Appeals for the Seventh Circuit felt that the name did not need to be destroyed, but could be rendered harmless by the addition of explanatory words.

At page 725, the court states:

"We are convinced that respondent may avoid any false impressions and implications arising from the use of the word 'Mills' if it uses on all of its stationery, garment labels, tickets, invoices, and other printed matter, these words 'Jobbers and Converters, Not Mill Owners or Mill Operators.' There would then be no possibility of deception. Of course, these are not the only words which might be adopted. The

Commission must in the first instance determine whether the words sufficiently convey the information that respondent neither owns nor operates a mill."

The Commission is now taking the position that qualifying words are not appropriate here because it is impossible to qualify a contradiction. The idea seems to be that anyone who from now on reads the terms "Alpacuna Contains no Vicuna" will first imply from the word "Alpacuna" that it contains Vicuna, and will then be confronted with the words "Contains no Vicuna." Thereupon, he will note the contradiction and will not be sure. Since no one is shown to have been misled by fourteen years' use of the unmodified mark, it is hard to believe the explanation would increase confusion. Petitioner is convinced that its request is reasonable. The court in the above case felt that it was proper for the Petitioner to use the word "Mills" in its name notwithstanding it was not a mill, provided it stated thereon these words:

"Jobbers and Converters, Not Mill Owners or Mill Operators."

The same was true in the Royal Milling case, and another case to the same effect is as follows:

Federal Trade Commission v. Hires Turner Glass Co., 81 Fed. (2d) 362 (1935)—C. C. A. 3.

In this case, the respondent was in the habit of advertising its mirrors as "copper-backed." It appeared that these words had come to indicate to the trade mirrors backed by a sheet of copper electrolytically applied. The respondent applied its so-called copper back by painting thereon a mixture of shellac and powdered copper. The advertising was, therefore, regarded as deceptive. The Commission directed the respondent to stop using the term "copper-backed." The Circuit Court of Appeals

for the Third Circuit affirmed the order. At page 364, Judge Thompson states:

"It may well be that, had this court been a fact-finding tribunal, it might have reached conclusions other than those reached by the petitioner. The petitioner, however, had before it ample evidence upon which to find that the terminology had acquired a secondary meaning, prior to its use by the respondent, and that the respondent's mirrors did not contain the essentials of genuine copper-back mirrors. Inasmuch as it is the duty of the Commission to determine the facts, it is our duty to sustain the Commission if there is any substantial evidence upon which its findings are based."

Thereafter, a petition for modification was filed, and the Commission's order was modified. At page 364, Judge Thompson states further:

"The Commission's cease and desist order is accordingly modified by adding thereto the following: 'Provided, however, that the respondent may use such designations as are accompanied by qualifying terms which clearly signify that the copper backing on its mirrors is not electrolytically applied'."

The court below thus in 1935 felt that it had the right to modify a destructive order of the Commission.

Dietzgen Co. v. Federal Trade Commission, 142 Fed. (2d) 321 (1944)—C. C. A. 7. (Decided May 3, 1944.)

In this case an order of the Federal Trade Commission against certain price fixing practices was approved by the court upon petition for review. The report of the case indicates that the opinion of the court was filed February 29, 1944. The reporter then states: "As Modified on Denial of Rehearing May 3, 1944."

The closing paragraph of the court's opinion reads as follows (page 332):

"The order of the Commission is approved. Counsel for respondent will draw a proposed order and submit it to petitioners, pursuant to the rule of this court respecting the drafting of orders in cases where appeal is taken from a ruling of an Administrative Board. In such order, respondent is directed to modify its order and make it clear that the cease and desist order enjoins petitioners from doing any of the acts or things condemned pursuant to any agreement, combination or conspiracy here found to exist."

Even the Circuit Court for the Second Circuit has recently modified an order of the Federal Trade Commission, notwithstanding its previous announcement in the Herzfeld case (140 Fed. 2d 207) (cited by the court below in its opinion R. 899) that it had no authority to do so.

Gelb v. Federal Trade Commission, 144 Fed. (2d) 580 (1944)—C. C. A. 2. (Decided August 14, 1944.)

The complaint of the Commission in this case had to do with advertising a preparation for shampooing and coloring the hair. A cease and desist order was issued, paragraph 2 of which reads as follows:

"(2) Representing that said preparations recondition the hair, or restore the natural or youthful color of the hair."

In affirming the Order, the Circuit Court of Appeals for the Second Circuit stated in part as follows (p. 583):

"Clause (2) of the order is modified by omitting the words 'recondition the hair or'; as so modified the order is affirmed."

This action is doubtless not to be considered in conflict with the position previously taken by the same court, that it had no power to modify the orders of the Commission. It probably based its modification of the order in this case on the claim that the evidence did not support the Commission's finding that the preparation would not "recondition the hair." While it is possible to explain the case upon the theory that there was no evidence to support the finding, nevertheless it is worthy of note that the court did modify the order of the Commission. In the case at bar, it may also be noted that there is no evidence that the addition of the words "Contains no Vicuna" will be ineffective here. If there is no such evidence, there likewise is no basis for abruptly ordering the respondent to cease and desist altogether from using the word "Alpacuna."

Lekas & Drivas v. Federal Trade Commission, 145 Fed. (2d) 976 (1944)—C. C. A. 2. (Decided November 30, 1944.)

In this case the Commission attacked certain advertising relative to olive oil which was stated to have some slight value as a laxative. The Commission ordered such advertisement to stop. An expert witness had stated that the value of olive oil as a laxative was "Slight, if any." This, the Circuit Court of Appeals for the Second Circuit, held was not sufficient to support the order which wholly enjoined advertising on that subject. At page 976, the court states:

"For this reason we think that the order: Article I (a), should be supplemented by this suffix: 'except a possible slight value as a laxative.'

"Order modified as above indicated, and, as modified, affirmed."

There was sound reason for the Circuit Court of Appeals to consider the remedy in this case unnecessarily

harsh. The trade name "Alpacuna" has now been used for considerably more than fourteen years. It was invented by the Petitioner as a fanciful name for a new kind of overcoat. This trade name has been advertised by stores all over the United States, as well as by the Petitioner. The local franchise for Alpacuna coats is sought after, and is valuable. The combined efforts of all these people has made the Alpacuna coat the largest selling overcoat in the United States. The good-will attached to this name is valuable. No one has ever been deceived by it. Very few people have ever heard of a "Vicuna" which the Commission says is suggested by the name.

This proceeding was brought by the Federal Trade Commission to compel a change in the method of advertising garments made of wool or other animal fibres. The Alpacuna coat comes in two weights, light and heavy. The heavy coat has a cotton back on which the woolen face is built. The Commission felt that the fibre content was not properly represented in the advertising. The face of the coat is 40 per cent virgin wool, and 60 per cent alpaca and mohair. The Petitioner readily agreed to state frankly the fibre content of the coat. Doing so was considered an advantage, and there was never any intention at concealment. The Commission's order requiring proper representation as to fibre content is, therefore, not opposed.

The Wool Products Labelling Act now requires by statute that all fibre garments be properly marked to indicate the fibre content. Since all manufacturers are now prohibited from marking something as wool which is not entirely virgin wool, the equality of treatment thus afforded is eminently fair.

As may be imagined, a trade name as widely known and well established as "Alpacuna" has many imitators. If the Court could examine the advertising in any large city, when the spring or fall sales' campaigns are in

progress, many names would be noted which are obviously designed to approximate the name "Alpacuna." Samples of some of these will be presented to the Court. The evidence in this case shows that there are large numbers of such names. At R. 305a and 639a-640a, sixty-two are listed.

The effect of complete destruction of the primary trade name "Alpacuna" is certain to render more valuable myriads of imitations. The Commission has no campaign in prospect to endeavor to stop the other similar names. Thus, the leader in the trade who invented this type of cloth and established public acceptance for it is to be penalized by having its trade name destroyed and its competitors enthroned in a primary position. The order of the Commission is not limited to interstate sales. Complete destruction of the trade name is demanded. This enforced abandonment of a trade name throws it open to successful imitation by any one else. Near approximations have already been adopted by many, and these are not the object of any attack by the Commission.

It is respectfully submitted that no decision of this Court requires a Circuit Court of Appeals to affirm an order like this which it believes to be wrong. This Court has, itself, directed modification of remedy prescribed by numerous commissions or administrative agencies, even the National Labor Relations Board. It is, therefore, submitted that there is not and should not be any firm rule which completely prohibits modification of a remedy prescribed by the Federal Trade Commission. A reference back to the Circuit Court of Appeals for the Third Circuit with a mandate to consider the propriety of the prescribed remedy is all that Petitioner seeks. The right to modify an unfitting remedial decree has been recently affirmed by this Court in the May case. It may be that such modification is to be sparingly applied, but the Circuit Court of Appeals for the Third Circuit has clearly indicated its dissatisfaction with this order and its belief

that the order transgresses the power of the Commission because it is too sweeping. That Court has also shown its belief that the order should be modified if the court has power to do so.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 605

JACOB SIEGEL COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN
OPPOSITION

OPINION BELOW

The opinions of the Circuit Court of Appeals (R. 891, 916) are reported in 150 F. 2d 751. The findings of fact, conclusion, and order of the Federal Trade Commission (R. 646) are not yet reported.

JURISDICTION

The decree of the Circuit Court of Appeals was entered October 9, 1945 (R. 918-919). The petition for writ of certiorari was filed November 15, 1945. The jurisdiction of this Court is invoked

under Section 5 (c) of the Federal Trade Commission Act, as amended, c. 49, 52 Stat. 111, 15 U. S. C. 45 (c), and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Commission, having determined that the use of the word "Alpacuna" to describe or designate coats made of a fabric containing alpaca but no vicuna fiber was deceptive and misleading, abused its discretion in requiring discontinuance of the use of the word "Alpacuna".

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, as amended by the Act of March 21, 1938, c. 49, 52 Stat. 111, 15 U. S. C. 45, provides in part as follows:

(a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

* * * * *

(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or car-

ries on business, * * * * * Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed, * * *. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. * * *

STATEMENT

In a proceeding under Section 5 of the Federal Trade Commission Act the Commission concluded that the acts and practices of petitioner set forth in the Commission's findings constituted unfair methods of competition in interstate commerce and unfair and deceptive acts and practices in such commerce (R. 653). The Commission thereupon entered an order directing petitioner to cease and desist from using in interstate commerce the acts or practices specified in six numbered subparagraphs of the order (R. 654-655).¹

¹ The Commission ordered petitioner to cease and desist from:

1. Representing that respondent's coats contain guanaco hair.
2. Representing that the Angora goat hair or mohair used in respondent's coats is imported from Turkestan or any other foreign country.
3. Representing through the use of drawings or pictorial representations, or in any other manner, that respondent's

In a proceeding brought in the court below, petitioner challenged only that part of subparagraph 6 of the order which requires petitioner to discontinue use of the word "Alpacuna" to designate or describe coats made of fabric containing no vicuna fiber (R. 892). The court affirmed the validity of all the provisions of the order. Petitioner now seeks review of the affirmation of only that part of subparagraph 6 which it unsuccessfully challenged in the court below.

Petitioner does not now question the sufficiency of the evidence to support the findings of the Commission (Pet. 2). Among these findings the following are deemed pertinent:

Petitioner has manufactured and sold overcoats since 1930 and topcoats since 1931 or 1932, designated by it as "Alpacuna" coats (R. 648, 649). The overcoats are made of a fabric having a face or pile composed of approximately 50% alpaca, coats contain fibers or materials which they do not in fact contain.

4. Representing that coats made of fabrics which have a cotton backing are composed entirely of wool or of wool and hair.

5. Using any advertising matter or causing, aiding, encouraging, or promoting the use by dealers of any advertising matter which purports to disclose the constituent fibers or materials of coats composed in part of cotton, unless such advertising matter clearly discloses such cotton content along with such other fibers or materials.

6. Using the word "Alpacuna," or any other word which in whole or in part is indicative of the word "vicuna," to designate or describe respondent's coats; or otherwise representing, directly or by implication, that respondent's coats contain vicuna fiber.

20% mohair, and 30% wool worked into a cotton backing. The face comprises approximately 70% and the cotton backing 30% of the entire fabric. (R. 648.) The topcoats are made of a fabric essentially the same as the facing of the overcoat but contain no cotton backing (R. 649). It is undisputed that neither the overcoats nor topcoats contain any vicuna fiber (R. 652). Petitioner sells these coats to retail dealers who in turn sell them to the purchasing public (R. 649).

Petitioner's use of the name "Alpacuna" tends to deceive a substantial part of the purchasing public by inducing the erroneous belief that the coats contain vicuna fiber (R. 652).

The court below held that there was substantial evidence to support the finding of the Commission that the word "Alpacuna" is misleading and deceptive to a substantial portion of the purchasing public (R. 897), and that the prohibition against the use of the word "Alpacuna" was not an abuse of the discretion as to remedy vested in the Commission (R. 901-902). The court stated, however, that it thought the prohibition "far too harsh" and would modify the order to permit use of the word with "qualifying language" if the "control of the remedy" which it possessed under the decision of this Court in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, had not been taken from it by subsequent decisions of this Court, under other statutes, vesting discretion as to remedy in the administrative agency (R.

898-902). Upon rehearing restricted to possible modification of the Commission's order (R. 915), the court adhered to and confirmed its original decision (R. 916).

ARGUMENT

The Circuit Court of Appeals held that judicial review of orders of the Commission was limited to determining if the Commission had abused the discretion vested in it to select the remedy necessary to give adequate protection to competitors and the public (R. 902). This was clearly correct. The contention that this holding is at variance with the decision in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, and merits review by this Court, has previously been urged in an unsuccessful application for a writ of certiorari to review a comparable order of the Commission. *Parke, Austin & Lipscomb v. Federal Trade Commission*, No. 392, October Term 1944, certiorari denied, 323 U. S. 753. The "abuse of discretion" test was not explicitly rejected in the *Royal Milling* case, and it was approved in *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 81, by a unanimous court the following term. None of the circuit courts of appeals decisions cited by petitioner as in conflict (Pet. 5) adopts a different rule. In each of them the order of the Commission was modified to conform to the findings or the evidence, and none declares that as to remedy the test is anything but abuse of discretion.

The further suggestion that the court below erred in holding that the Commission did not abuse its discretion presents no important question of federal law and does not conflict with any applicable decision of this Court. The decision in *Federal Trade Commission v. Royal Milling Co.*, *supra*, has not been interpreted as laying down any general rule that a corrective statement to accompany a misleading brand name is adequate in all cases to remove the deception which it causes and that any contrary determination by the Commission is to be set aside as an abuse of discretion. In *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, the Commission found that use of the words "California white pine" to describe products of the *Pinus ponderosa* was deceptive and entered an order prohibiting use of the word "white" to describe such products. This Court, in sustaining the order, said (pp. 81-82) that "the Commission did not abuse its discretion in reaching the conclusion that no change of the name short of the excision of the word 'white' would give adequate protection."

The courts in some of the cases in which they have upheld orders of the Commission requiring discontinuance of a misleading word as against the contention that an accompanying explanatory statement would adequately cure the deception, have pointed out that when the misleading word was absolutely false in its connotation, "it cannot be qualified; it can only be contradicted." *Fed-*

eral Trade Commission v. Army and Navy Trading Co., 88 F. 2d 776, 779-780 (App. D. C.); *H. N. Heusner & Son v. Federal Trade Commission*, 106 F. 2d 596, 597 (C. C. A. 3); *El Moro Cigar Co. v. Federal Trade Commission*, 107 F. 2d 429, 431 (C. C. A. 4). The evidence in the present case, in addition to showing that the implication of the word "Alpacuna" was absolutely false, showed that the dealers used advertisements of their own design over which petitioner had no control (R. 727, 730). Certainly, it was not unreasonable for the Commission to conclude that adequate protection of competitors and the purchasing public required a form of relief which would remove the danger of retail dealers advertising the brand name without corrective words.

CONCLUSION

The ruling below is correct and there is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

J. HOWARD McGRATH,
Solicitor General.

WENDELL BERGE,
Assistant Attorney General.

HERBERT BORKLAND,
Special Assistant to the Attorney General.

W. T. KELLEY,
Chief Counsel.

DECEMBER 1945.

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 605

JACOB SIEGEL COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION

OPINIONS BELOW

The findings, conclusions and order of the Federal Trade Commission (R. 646-656) are reported at 36 F. T. C. 563. The opinion of the Circuit Court of Appeals (R. 883-892) and its *per curiam* affirmance on rehearing (R. 905) are reported at 150 F. 2d 751.

JURISDICTION

The decree of the Circuit Court of Appeals was entered November 30, 1944 (R. 893); its final decree on rehearing was entered October 9, 1945 (R. 907-908). The petition for writ of certiorari

was filed November 15, 1945, and was granted January 2, 1946 (R. 911). The jurisdiction of this Court rests on Section 5 of the Federal Trade Commission Act as amended, 52 Stat. 111, 15 U. S. C. 45, and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS INVOLVED

1. Whether the court below correctly held that a discretionary determination by the Federal Trade Commission of the remedy to be embodied in a cease-and-desist order directed against an unfair method of competition and unfair acts and practices in interstate commerce is binding upon the courts in the absence of abuse of discretion.

2. Whether the Commission, having determined that the use of the word "Alpacuna" was misleading and deceptive as applied to coats made of a fabric containing alpaca but not vicuna, abused its discretion by forbidding further use of the word with respect to such coats.

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, as amended by the Act of March 21, 1938, c. 49, 52 Stat. 111, 15 U. S. C. 45, provides in part as follows:

(a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

* * * * *

(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, * * * * *

Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed * * *. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. * * *

STATEMENT

The Federal Trade Commission, after hearing on complaints¹ which it had issued against

¹ The Commission's original complaint of May 6, 1938, was followed by a first amended complaint of November 5, 1938, to which answer was made and on which a hearing proceeded. During the course of the hearing, the Commission entered its order directing that the amended complaint be amended to conform to the evidence previously taken and that such evidence be adopted in connection with the second amended complaint (R. 274-276).

respondent under Section 5 of the Federal Trade Commission Act, made findings of fact (R. 646-653) which may be summarized as follows:

Petitioner, a Pennsylvania corporation with its principal place of business in Philadelphia, manufactures, and sells and distributes in interstate commerce in competition with others, overcoats and topcoats which it designates as "Alpacuna" coats (R. 647-648). The overcoats consist of a face or pile which is composed of 50% alpaca, 20% mohair and 30% wool, and the fibers making up this face are worked into a cotton backing (R. 648). The face comprises about 70% and the backing about 30% of the entire fabric (*ibid.*) and, since the coats are fully lined, a prospective purchaser has little or no opportunity to observe the cotton backing (R. 651). Petitioner also makes and sells an "Alpacuna" topcoat made of essentially the same materials as the face of the overcoating fabric, but without any cotton backing and with very little lining (R. 649).

Petitioner's coats are sold to the public through retail dealers to whom it furnishes in the course of its business suggested advertising copy which has been frequently used, and books containing samples of its fabrics which have been frequently displayed to the purchasing public (R. 649-650). Such copy and books have contained representa-

tions that "Alpacuma" fabric is made from alpaca obtained from the South American Andes, angora obtained from Turkestan or elsewhere in Asia, guanaco obtained from Peru, and wool from Texas sheep (R. 649-650). Guanaco is not used and the Angora goat hair or mohair is not imported from Turkestan or elsewhere, but is obtained from Texas goats (*ibid.*).

The name "Alpacuma" is deceptive and misleading to a substantial portion of the purchasing public because it induces the erroneous belief that the coats contain fiber obtained from the animal known as the vicuna (R. 652). It also has the tendency and capacity to mislead and deceive a substantial portion of the public with respect to the fiber content of petitioner's coats (R. 653).

On the findings so summarized the Commission concluded that the acts and practices of petitioner constituted unfair methods of competition and unfair and deceptive acts and practices in interstate commerce (R. 653), and issued its order that petitioner cease and desist from the acts specified

There was undisputed testimony that vicuna enjoys a reputation as one of the finest fleeces (R. 24, 34, 67), that its presence in a coat would lend additional value to it (R. 34). It is, however, extremely rare, and coats made of vicuna sell at prices ranging between \$600 and \$900 (R. 33-34, 69). Petitioner's coats sold at retail for between \$30 and \$45 (Comm. Exs. 71, 76, 78; R. 864, 867, 870).

in six subparagraphs of its order (R. 654-655).³ Petitioner, seeking review of the Commission's order in the court below, challenged only so much of the order, contained in subparagraph 6, as prohibited the use of the name "Alpacuna" in designating or describing its coats (R. 657).

The court below held that the Commission's findings respecting the use of "Alpacuna" were supported by substantial evidence (R. 889) and that the prohibition of use of the word was not an abuse of the discretion as to remedy vested in the

³ The Commission ordered petitioner to cease and desist from:

1. Representing that respondent's coats contain guanaco hair.

2. Representing that the Angora goat hair or mohair used in respondent's coats is imported from Turkestan or any other foreign country.

3. Representing through the use of drawings or pictorial representations, or in any other manner, that respondent's coats contain fibers or materials which they do not in fact contain.

4. Representing that coats made of fabrics which have a cotton backing are composed entirely of wool or of wool and hair.

5. Using any advertising matter or causing, aiding, encouraging, or promoting the use by dealers of any advertising matter which purports to disclose the constituent fibers or materials of coats composed in part of cotton, unless such advertising matter clearly discloses such cotton content along with such other fibers or materials.

6. Using the word "Alpacuna," or any other word which in whole or in part is indicative of the word "vicuna," to designate or describe respondent's coats; or otherwise representing, directly or by implication, that respondent's coats contain vicuna fiber.

Commission (R. 887-889). The court stated, however, that it thought the prohibition "far too harsh" and that it would modify the order to permit use of the word with "qualifying language" if the "control of the remedy" which it considered it possessed under the decision of this Court in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, had not been limited by subsequent decisions of this Court, involving other administrative tribunals, vesting discretion as to remedy in the administrative agency (R. 889-892).

Upon rehearing restricted to possible modification of the Commission's order (R. 904), petitioner displayed labels which added the words "contains no vicuna" following the word "Alpacuna" and sought modification to permit continued use of the name in this manner. The court, refusing the suggested modification, adhered to and confirmed its original decision (R. 905).

SUMMARY OF ARGUMENT

The Commission, having found upon sufficient evidence that the use of "Alpacuna" is misleading and deceptive, has discretionary authority to determine the remedy; and the remedy selected will be modified or eliminated on review only if the determination is so unwarranted as to constitute an abuse of discretion, as this Court held

in its latest decision with regard to the remedial feature of an order of the Commission, *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67. Such has been the consistent view of the circuit courts of appeals in recent cases involving Federal Trade Commission orders directed against deceptive firm names and product designations; and the same principle has been followed with respect to judicial review of the discretionary determinations of other administrative agencies. There is no question here of relationship of the order to the evil to be prevented, since the order deals with the exact violation of the statute found to have been committed.

The Commission did not abuse its discretion by prohibiting the use of the word "Alpacuna", since no lesser remedy would adequately cure the deception. A contradiction, "Contains no vicuna", of a portion of the meaning the term conveys, would introduce new ambiguities into its use and would not eliminate the danger which arises from placing in the hands of dealers the means of deceiving the public. Petitioner's contention that the Commission cannot validly prescribe a remedy without substantial evidence of the inadequacy of milder remedies, and that there was no such evidence here, misconceives the nature of the administrative determination and would give rise to insoluble procedural problems.

ARGUMENT

I

THE ORDER OF THE FEDERAL TRADE COMMISSION AS TO
THE REMEDY IS BINDING UPON THE COURTS IN THE
ABSENCE OF ABUSE OF DISCRETION

Petitioner does not question the sufficiency of the evidence to support the Federal Trade Commission's finding (R. 652) that "the name 'Alpacuna' is misleading and deceptive to a substantial portion of the consuming public." The sole contention is that some means of curing the deception should have been found short of prohibiting the use of the word "Alpacuna", such as the addition of "qualifying words" to the label and to advertisements making use of the name; and it is urged that the Commission's failure to include permission in its order for the continued use of "Alpacuna" if followed by the words "contains no vicuna" to that extent invalidates the order. We submit, however, that the remedy required to correct an unfair method of competition lies distinctly within the discretion of the Commission and that the order in this case is in no sense an abuse of the Commission's authority. It cannot, therefore, be disturbed upon review.

Petitioner suggests (Br. 8) that the decision of the court below is predicated upon the view that a reviewing court is wholly without power to modify an order of the Commission as to the remedy, however broad in scope or unrelated to

the evil to be prevented the prescribed remedy may be. Actually, however, the court below held, not that the courts are powerless, but that the Commission's determination of the remedy to be applied in a given case may be modified by the courts only if it is so unwarranted by the circumstances that it can fairly be said to constitute an abuse of discretion. The court recognized that there was no abuse here despite its view that the Commission's order is harsh; for (R. 892)—

* * * the discretion as to the remedy in such controversy as this has now been vested in the Federal Trade Commission. That discretion has been exercised to totally prohibit the use of the name "Alpacuna" to the petitioner. Since the Commission has such power, we are unable, in view of the evidence, to say that the power has been abused in this instance, though under the same facts and circumstances, if we were still in control of the remedy, we would modify the order as above indicated.

What petitioner is contending for, in contrast to the basis upon which the court rested its decision, is power in a reviewing court to substitute its judgment for that of the Commission as to the appropriateness of the remedy to be applied. Petitioner buttresses its contention with the proposition (Br. 8-9) that, to support the remedy adopted by the Commission, there must be sub-

stantial evidence that a milder remedy would not suffice. Neither authority nor analysis of the problem supports any such bases of decision. The court below applied the proper test to the Commission's order and reached the correct result.

The most recent case in which this Court has considered modification of the remedy prescribed in an order of the Commission directed at unfair practices is *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67. The Commission there had found that the use of the words "California white pine" to describe products of the *pinus ponderosa*, botanically a yellow pine, was deceptive and an unfair method of competition and entered an order prohibiting use of the word "white" in conjunction with "pine" to describe such products.—This Court, in sustaining the order, concluded that "the Commission did not abuse its discretion in reaching the conclusion that no change of the name short of the excision of the word 'white' would give adequate protection". (291 U. S. at 81-82.)

Petitioner has entirely ignored this decision and has relied upon the earlier case of *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212. There the Commission found that many purchasers of flour, including some dealers, believe that the words "milling company" mean a concern engaged in grinding wheat into flour and

also believe that the product of such a concern is more desirable in price or quality than the product of a concern which (as was the case with the respondents there) merely mixes and blends different kinds of flour purchased from others. Because of these findings the Commission entered an order forbidding the use of the words "milling company" or other similar terms in respondents' corporate or trade names. This Court held, however, that the evil found by the Commission would be corrected if the use of qualifying words in immediate connection with the corporate names were required. It directed modification of the order to permit such qualified use, leaving the form and manner of the qualifications to be fixed by the Commission. 288 U. S. at 218.

The *Algoma* case, ^klike the present one, involved the use of a name for a product which tended to mislead purchasers as to the identity of what they were getting. The *Royal Milling Co.* case, on the other hand, involved a misleading aspect of the names under which sellers did business. It does not follow that, because the Commission may have gone too far in the latter case by attempting to deprive merchants of their established names when explanatory statements would inform purchasers of the actual nature of their businesses, it must also permit the continued use of a misleading product designation which would continue to be a means of deceiving the consuming public (see *infra*, p. 21).

The *Algoma* case holds to the contrary and, unlike the *Royal Milling Co.* case, clearly lays down the test which is to be applied in judging the validity of an order of the Commission in this field. The decisions in the *Royal Milling* and *Algoma* cases are attributable, not to the application of different principles, but to factual differences from which it might be concluded that the Commission's determination constituted an abuse of discretion in the one case but not in the other.

There was another important distinguishing circumstance in the *Royal Milling Co.* case. The respondents there had made an offer early in the proceedings before the Commission to place the words "Not Grinders of Wheat" in conspicuous lettering on their letterheads, bags, invoices, etc. 288 U. S. at 215. No such offer was made in the Commission proceedings in the *Algoma* case or in the instant case. One who seeks a limitation of the remedy against use of a misleading name should be required to submit his proposal to the Commission in order that it may exercise its administrative judgment as to the adequacy of the remedy as it would be limited. The proposal comes too late when it is initially put before a reviewing court. Cf. *National Labor Relations Board v. Cheney California Lumber Co.*, No. 319, this Term, decided February 25, 1946.

In the recent cases involving Federal Trade Commission orders directed against deceptive firm

names and product designations, the circuit courts of appeals have consistently followed the "abuse of discretion" test laid down in the *Algoma* case with respect to the appropriateness of the remedy. *Perloff v. Federal Trade Commission*, 150 F. 2d 757 (C. C. A. 3); *Charles of the Ritz Distributors Corp. v. Federal Trade Commission*, 143 F. 2d 676 (C. C. A. 2); *Parke, Austin & Lipscomb, Inc. v. Federal Trade Commission*, 142 F. 2d 437 (C. C. A. 2), certiorari denied, 323 U. S. 753; *Herzfeld v. Federal Trade Commission*, 140 F. 2d 207 (C. C. A. 2). In all of these cases orders of the Commission which totally forbade the use of specified words as misleading and deceptive were sustained as against the contention that qualifying words would remedy the evil, on the ground that the Commission's orders did not involve abuse of discretion.*

In several recent cases cited by petitioner, in which orders of the Commission directed against the use of certain words were modified, the ground of modification was, not that the Commission had

* In the order in the *Herzfeld* case, the word "Mills" was prohibited in the corporate title of a dealer in, but nonmanufacturer of, rugs, despite its relations with supplying manufacturers which amounted to rather complete control over their production; in the *Ritz* case, "*Rejuvenescence*" was prohibited as part of the name of cosmetic preparations which the Commission found did not possess rejuvenating qualities; in the *Perloff* case, "Packing" was prohibited in the firm name of distributors, but nonpackers, of meat; in the *Parke* case, "Smithsonian Institution" was forbidden in the corporate title of a private book-distributor enjoying contractual relations with the Smithsonian Institution.

committed reversible error in its determination of the remedy, but that certain of the Commission's findings of fact lacked substantial evidentiary support. In *Gelb v. Federal Trade Commission*, 144 F. 2d 580 (C. C. A. 2) a Commission order prohibiting the representation that a hair-oil product "reconditioned" the hair was modified because the court (p. 582) found nothing which could be "regarded as substantial evidence that Clairol is incapable of reconditioning the hair", whereas many witnesses affirmed from experience that it did. In *Lekas & Drivas v. Federal Trade Commission*, 145 F. 2d 976 (C. C. A. 2), a Commission order restricting advertising claims in regard to an olive oil was modified to permit advertisement of a "possible slight value as a laxative", the sole witness in the proceeding having testified that there was such an effect from its use. *Ultra-Violet Products v. Federal Trade Commission*, 143 F. 2d 814, 816-817 (C. C. A. 9) contains a similar holding.

As the court below recognized by its reliance upon decisions of this Court which involved orders of the National Labor Relations Board, the extent to which a court may interfere in review proceedings with the remedy prescribed in an order of the Federal Trade Commission is determined by the same principles as apply in relation to the orders of other administrative agencies. In the present case, as this Court recently remarked in a

related connection, it is necessary to recall, as did the court below, that the courts "must not substitute their notions of expediency and fairness for those which have guided the agencies to whom the formulation and execution of policy have been entrusted". *Railroad Commission v. Rowan & Nichols Oil Co.*, 310 U. S. 573, 580-581. Clearly the Federal Trade Commission is the body charged with devising the means of eliminating the unfair methods of competition and the unfair or deceptive acts and practices against which it is directed to proceed. Fully applicable here is the holding of this Court with respect to the National Labor Relations Board, that when the Board finds on the basis of substantial evidence that unfair labor practices have been committed, the determination of appropriate remedies is within the peculiar competence of the Board, so long as it renders an "allowable judgment." *Virginia Electric & Power Co. v. National Labor Relations Board*, 319 U. S. 533, 543-544; *Franks Bros. Co. v. National Labor Relations Board*, 321 U. S. 702, 704; *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72, 82; *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, 194, 198-199; *National Labor Relations Board v. Cheney California Lumber Co.*, *supra*.

The same principles have been enunciated with respect to the discretionary features of many types of administrative orders other than cease-and-desist orders. See, e. g., *Northwestern Electric Co.*

v. Federal Power Commission, 321 U. S. 119, 124; *Federal Security Administrator v. Quaker Oats Co.*, 318 U. S. 218, 228; *Board of Trade v. United States*, 314 U. S. 534, 545-548; *American Power & Light Co. v. Securities & Exchange Commission*, 141 F. 2d 606, 619 (C. C. A. 1). In the case at bar, as in these and other instances of judicial review of discretionary administrative action, the issue turns, not upon the wisdom of the administrative determination as the court may view it, but upon the existence of a rational relationship between the purposes of the statute and the remedy prescribed in the order.

The present case does not present any question of reasonable relationship of the provision embodied in the order to the statutory violations found by the Commission, such as was involved in *National Labor Relations Board v. Express Publishing Company*, 312 U. S. 426, 432-438, elaborated upon in *May Department Stores Co. v. National Labor Relations Board*, No. 39, this Term, pp. 8-13 of slip opinion. Cf. *National Labor Relations Board v. Cheney California Lumber Co.*, *supra*. See also *New Haven R. R. v. Interstate Commerce Commission*, 200 U. S. 361, 402-405. The order of the Federal Trade Commission indisputably relates to the exact unfair practice, namely, use of the trade name "Alpacama", which the Commission found to be misleading and deceptive. The order is therefore addressed to the precise violation found to have been committed. There is the closest

possible relationship of remedy to evil, and there consequently is no basis for setting aside or modifying the Commission's order upon the ground that it is couched in unduly broad terms or covers practices not involved in the case.

Nor does the provision of the statute, authorizing a reviewing court to modify as well as to affirm or set aside an order of the Federal Trade Commission, establish a broader scope of judicial review with respect to such orders than would otherwise prevail. It is elementary that any action taken by a court with respect to an order of the Commission must have reference to a feature of the order which lies within the competence of the court to correct. The boundaries of that competence are set by the purposes of the legislation establishing the Commission and by the specific provision of Section 5 of the Act (*supra*, p. 3) with respect to the finality of findings of fact supported by evidence. If the judicial power to modify an order of the Commission were taken literally and without qualification as stated in the statute, there would be no limit to it except as respects the Commission's findings of fact and, consequently, there would be no field within which the Commission's discretionary judgment could operate with finality. Such a result would conflict with the authorities previously cited and with the entire philosophy of judicial review which this Court consistently follows.

II

THE COMMISSION'S ORDER PROHIBITING USE OF THE WORD "ALPACUNA" WAS A PROPER EXERCISE OF ITS DISCRETION TO DETERMINE THE RELIEF NECESSARY TO PREVENT FURTHER VIOLATION OF THE STATUTE

The Commission, on the basis of the testimony given in the course of elaborate hearings, found that the name "Alpacuna" is misleading and deceptive to a substantial portion of the purchasing public "in that it represents or implies to such persons that respondent's coats contain material which they do not in fact contain" (R. 652). There was direct testimony by experts in the trade and members of the public that to them the designation of a fabric as "Alpacuna" implied that the constituents were alpaca and vicuna, and nothing more.⁵ It is, indeed, somewhat difficult to conceive any other implication to any who know, as many do, that alpaca and vicuna are animals whose hair is valuable.⁶ Whatever petitioner's intention may have been in coining the term, the Commission's findings as to the capacity of "Alpacuna" to deceive and mislead the public are clearly unassailable, and they are not in fact attacked by the petition.

⁵ E. g., R. 89, 105, 110, 120, 201, 215.

⁶ Witness Brown, president of the manufacturers of the material sold by petitioner when asked what the term "Alpacuna" conveyed to him responded: "I would naturally think it was a combination of 'Alpaca' and 'Vicuna.'" And, later: "Q. Can you imagine what else it would come from?" A. "Not with my knowledge of fibers, no." R. 26.

The Commission, with its valid finding before it, was entitled to conclude that nothing short of prohibition of the term "Alpacuna" would give assurance of preventing the deception springing from the use of this name. As several courts have noted, a word which is absolutely false in its connotation "cannot be qualified; it can only be contradicted";⁷ and there is a fundamental want of logic in the suggestion that the false assertion of a misleading word is cured by an accompanying contradiction; for, as the *Heusner* case just cited points out (106 F. 2d at 597), customers are simply placed in the position of having to choose at their peril between the false label and an appended correct statement. Moreover, if the contradiction "Contains no vicuna" were believed, the name would still be deceptive; for in that event "Alpacuna" would necessarily imply a fabric composed exclusively of alpaca. Petitioner's coats are not composed of alpaca but of a mixture of animal fibers containing only 50% of alpaca, supplemented in the overcoat by a cotton backing which constitutes 30% of the entire fabric (see *supra*, p. 4). We think this case fully supports the conclusion of a recent commentator that "The addition of a quali-

⁷ *Federal Trade Commission v. Army & Navy Trading Co.*, 88 F. 2d 776, 779 (App. D. C.); *H. N. Heusner & Son v. Federal Trade Commission*, 106 F. 2d 596 (C. C. A. 3); *El Moro Cigar Co. v. Federal Trade Commission*, 107 F. 2d 429 (C. C. A. 4).

lying phrase will rarely counteract the evil effects of the deceptive brand or name. If the Commission's orders are to possess any vitality, the restraint must be complete and unqualified . . . in the long run the public interest will be best served if no compromise is made with falsity."^{*}

Even if the falsity of petitioner's labels and advertising could be regarded as neutralized by the addition of "contains no vicuna" to the name "Alpacuna", petitioner would still be permitted to place in the hands of its customers, the retailers of its product, without check, an instrument of misleading the public; for, as petitioner's sales manager testified (R. 726), the retailer may determine his own advertising and will, presumably, make such use of the name as he pleases. This Court has recognized that in the case of misleading labels it is an unfair method of competition to put "into the hands of the retailer an unlawful instrument, which enables the retailer to increase his own sales of the dishonest goods, thereby lessening the market for the honest product." *Federal Trade Commission v. Winsted Hosiery Company*, 258 U. S. 483, 494. See also *Koolish v. Federal Trade Commission*, 129 F. 2d 64, 65 (C. C. A. 7), certiorari denied, 317 U. S. 683, rehearing denied, 317 U. S. 711. For the

^{*} Handler, *Unfair Competition and the Federal Trade Commission*, 8 Geo. Wash. L. Rev. 399, 408 (1939).

Commission to attempt to proceed against the retailers of "Alpacuna" who might misuse the name would be obviously impracticable if not beyond the Commission's statutory power to deal with practices arising in interstate commerce.

Petitioner's attempt (Br. 8-9) to fasten upon the Commission the requirement that there must be substantial evidence of the inadequacy of milder remedies in order to sustain the remedial provision contained in a Commission order, must fail in this case for several obvious reasons. Not only is there record evidence to which we have pointed, relating to the deceptiveness of the name "Alpacuna," which sustains the order (cf. *Federal Trade Commission v. Raladam Co.*, 316 U. S. 149, 151-152), but the entire contention misconceives the nature of the determination here involved. The remedial provision of an order relates to the future; there cannot be "evidence" in the ordinary sense relating to its operation or to the operation of possible alternatives, but only opinion or analogy or inferences as to tendencies. Factual determinations are not involved in prescribing a remedy, but, rather, decisions with regard to probabilities and the gains and losses residing in alternative courses of action—decisions which are made in the light of facts and which must operate in an established factual setting, to be sure, but decisions primarily of policy—in short, discretionary decisions which lie at the heart of the ad-

ministrative process and are not to be disturbed by courts unless arbitrarily or irrationally made.⁹

Procedurally, moreover, petitioner's contention would give rise to problems defying satisfactory solution. It would inject into a late stage of every proceeding involving a misleading trade name or trade-mark the litigable question whether an explanatory or contradictory statement, rather than outright discontinuance of the falsehood, might not adequately correct the deception. A party, no matter how misleading his trade name or trade-mark was found to be, could after the close of the long administrative process, fall back on a second and distinct line of defense in the courts by offering to use such "qualifying" language as his ingenuity might suggest, and thereby cast upon the Commission the burden of demonstrating that his suggestion would be inadequate to meet the need. Prolongation of the proceedings would result, without compensating benefits; and in the end the question of judgment would remain—a question proper for administrative and not for judicial solution, if our contention is correct.

It should be observed finally, that it is no defense that a misleading trade name was adopted without fraudulent design (*Federal Trade Com-*

⁹ Cf. *Final Report of the Attorney General's Committee on Administrative Procedure* (1941), pp. 115-119; Landis, *The Administrative Process* (1938), pp. 146-152.

mission v. Algoma Lumber Co., 291 U. S. 67, 79); or that it has been continuously used for many years (*ibid.*); or that those who are "trained and experienced" are not misled (*Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 116); or that the name has been registered in the Patent Office as a trade-mark (*Charles of the Ritz Distributors Corp. v. Federal Trade Commission*, 143 F. 2d 676, 679 (C. C. A. 2)). Petitioner, therefore, is not aided by the length of time the name "Alpacuna" has been used or by the asserted want of intent to deceive which attended its adoption.

CONCLUSION

For the reasons stated, we respectfully submit that the decree of the Circuit Court of Appeals should be affirmed.

J. HOWARD McGRATH,
Solicitor General.

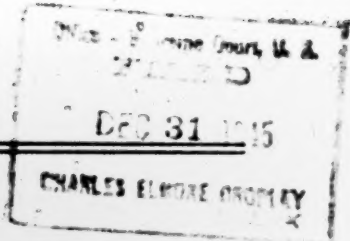
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MARCH 1946.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1915

No. 605

JACOB SIEGEL COMPANY,

Petitioner,

against

FEDERAL TRADE COMMISSION,

Respondent.

**BRIEF FOR AMICUS CURIAE IN SUPPORT OF
PETITIONER'S APPLICATION FOR A WRIT OF
CERTIORARI TO THE CIRCUIT COURT OF THE
UNITED STATES, THIRD CIRCUIT**

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**BRIEF FOR AMICUS CURIAE IN SUPPORT OF
PETITIONER'S APPLICATION FOR A WRIT OF
CERTIORARI TO THE CIRCUIT COURT OF THE
UNITED STATES, THIRD CIRCUIT**

This brief is submitted on behalf of a group of retail stores which are outlets for petitioner's topcoats and overcoats sold under the trade name of "Alpacuna". They appeared as *Amicus Curiae* in the Court below and were represented by counsel both at the original argument and upon the reargument. They now appear in support of the petition for a writ of certiorari upon the consent of the parties hereto.

The stores which appear are: Arnold Constable & Company, Incorporated, New York City; A. H. Benoit & Company, Portland, Maine; The William H. Block Company, Indianapolis, Indiana; Gimbel Brothers, Philadelphia, Pa.; The Larkey Company, Inc., Newark, New Jersey; Metropolitan Company, Dayton, Ohio; Maurice L. Rothschild, Chicago, Ill.; Samter Bros. Co., Scranton, Pa.; Harry Suf-
frin, Detroit, Michigan.

The interest of *Amicus Curiae* herein was set forth in the opinion of the Circuit Court as follows:

"A group of retail stores who handle the 'Alpacuna' coats have filed a brief, as *amicus curiae* in support of the petitioner's stand. Those stores set out that they have a very definite interest in the retention of the name by reason of co-operation in extensive advertising and selling the product over a period of years and that the barring of the use of the name 'Alpacuna' is a matter of serious detriment and direct prejudice to them" (R. p. 895).

Amicus Curiae respectfully calls this Court's attention to the fact that over eighty retail stores throughout the country, in addition to those specifically included as *Amicus Curiae*, have indicated to us their great interest in the preservation of the trade name of "Alpacuna". They have also stated that the name is of real value and that the prohibition of its use would involve a serious loss to them*.

Preliminary Statement

The Circuit Court, in its original opinion, evidently against its inclinations, stated that it felt constrained to follow the Second Circuit's view of the respective powers of the Commission and the Circuit Court.

Expressing dissatisfaction with that part of the Commission's order which destroyed petitioner's valuable trade

* In answer to a query these stores have stated that no customer of theirs has ever complained of being misled by the trade name "Alpacuna". Cf. result of poll in a New York Department store where over 200 customers chosen at random were questioned and not one of them declared that the name "Alpacuna" indicated vicuña to them (See R. p. 893, Circuit Court's opinion).

name built up over a period of years and at tremendous expense, the Court wrote:

“* * * we think strongly that the order is far too harsh.” (p. 898)

Later the Court stated:

“* * * if we were still in control of the remedy we would modify the order as above indicated.” (p. 902)

The Court further observed:

“The infraction, as the case now stands is slight and could be cured by simple and qualifying language.” (p. 898)

And again, as though weighing possible injury to the “substantial portion of the purchasing public” as against destruction of this valuable trade name of the petitioner, the Court stated:

“It destroys a widely favorable known trade name in existence for 14 years. It causes serious injury to the petitioner and its retail outlets.” (p. 898)

Notwithstanding its expressed disagreement with the order and the rule, the Court affirmed the Commission's order without modification and, upon rehearing, felt constrained to abide by that decision.

The Statute

The relevant portions of the Act here involved are:

“(a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

* * * * *

"The Commission is hereby empowered and directed to prevent persons * * * or corporations * * * from using unfair methods of competition in commerce and unfair and deceptive acts or practices in commerce."

15 U. S. C. A. Sec. 45 (a);
52 Stat. 111, Sec. 5.

"(c) Any person, * * * or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, * * * by filing in the court, * * * a written petition praying that the order of the Commission be set aside * * *. Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, *modifying* or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed, * * *." (Italics ours.)

15 U. S. C. A. Sec. 45 (c);
52 Stat. 111, Sec. 5.

"(d) The jurisdiction of the circuit court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive."

15 U. S. C. A. Sec. 45 (d);
52 Stat. 111, Sec. 5.

It is respectfully submitted that the Circuit Court had the power under the Federal Trade Commission Act to enter the modification sought herein.

The last and leading case in this Court dealing with the power of a court to modify a Federal Trade Commission order is *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212 (1933). Since that decision, no Federal Trade Commission case has been decided in the Supreme Court which deviates in any way from the rule enunciated therein. Furthermore, a study of the cases in the Supreme Court since that time reveals no opinion which has even distinguished or mentioned the *Royal Milling* case with disfavor.

Federal Trade Commission v. Royal Milling Co., *supra*, cited with approval cases arising in various Circuits in which orders of the Commission had been modified: *Fluegelman & Co. v. Federal Trade Commission*, 32 F. (2d) 59 (C. C. A. 2nd 1930); *Federal Trade Commission v. Cassoff*, 38 F. (2d) 790 (C. C. A. 2nd 1930); *Federal Trade Commission v. Good Grape Co.*, 45 F. (2d) 70 (C. C. A. 6th 1930).

Thereafter, courts in every Circuit wherein similar cases arose applied the rule of modification established by the *Royal Milling Co.* case: *Federal Trade Commission v. Hires Turner Glass Co.*, 81 F. (2d) 362 (C. C. A. 3rd 1935); *Etablissements Regaud, Inc. v. Federal Trade Commission*, 125 F. (2d) 590 (C. C. A. 2d, 1942); *Bear Mill Mfg. Co. Inc. v. Federal Trade Commission*, 98 F. (2d), 67 (C. C. A. 2d 1938); *Federal Trade Commission v. Midwest Mills, Inc.*, 90 F. (2d), 723 (C. C. A. 7th 1937).

Suddenly and without any previous indication, in 1944, one Circuit* considered itself powerless to follow the *Royal Milling* case any longer despite the fact that this court had never itself taken that position. This unwarranted and unwise departure has not been followed in other Circuits in Federal Trade Commission cases.

* Exemplified by *Herzfeld v. Federal Trade Commission*, 140 F. (2d) 207 (C. C. A. 2d 1944).

Thus, in the Ninth Circuit, in *Ultra Violet v. Federal Trade Commission*, 143 F. (2d) 814 (C. C. A. 9th 1944), the court, although finding that the Commission's order was based on substantial evidence, refused to enforce a portion of it on the ground that it was too broad and unfair to the petitioner. It further modified the order as requested to eliminate the over-reaching effect of the prohibition on petitioner's advertising in one particular. It is significant to note that the Federal Trade Commission failed to apply for a writ of certiorari in that case but now maintains, in the case at bar, that there is no power in this court to modify.

The rule of the Second Circuit as to "no power" apparently was based on certain decisions under the National Labor Relations Act.* This rule in labor cases became clear in 1940.** However, in 1942, two years later, the Seventh Circuit in a Federal Trade Commission case modified an order of the Commission on the ground that it was unreasonable and "would serve no purpose in the protection of the public, but might limit petitioner in truthfully representing its product." The dissenting opinion in the case particularly demonstrates that the decision is one where the court disagrees with the Commission as to the nature and extent of the order required to remedy the evil complained of. Yet the majority feels free to modify in accordance with its own views.

D. D. Corp. v. Federal Trade Commission, 125 F. (2d) 679 (C. C. A. 7th 1942).

* The *Herzfeld* case cited as its first two authorities: *International Assn. of Machinists v. National Labor Relations Board*, 311 U. S. 72 (1940) and *Phelps-Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177 (1941).

** The *International Assn. of Machinists v. National Labor Relations Board*, *supra*, was decided November 12, 1940.

Again, the Commission failed to apply for a writ of certiorari to this court.

Also in 1942, two years after the labor case rule was established, the Ninth Circuit in *Lee Boyer's Candy v. Federal Trade Commission*, 128 F. (2d) 261 (C. C. A. 9th 1942), modified an order of the Federal Trade Commission. The Commission's order forbade petitioner from distributing merchandise so packed and assembled that ~~sales of it to the public~~ "are to be made or may be made by means of a game of chance, gift enterprise or lottery scheme." The court expunged the words "may be made" on the ground that the order thus written was too broad.

It is interesting to note that the Commission, on page 11 of its brief, argued:

"The Commission is entitled to enter an order broad enough to prevent evasion."

Further, on page 15 of its brief, it protested:

"Such an opinion will in every sense afford petitioner as much protection as would a modified order to cease and desist at the same time avoiding a modification which will have 'the effect of leaving a loop-hole for evasion which is certainly closed and no more than closed by the use of the words in controversy.' "

Yet the court, following its previous decision in *Ardelle Inc. v. Federal Trade Commission*, 101 F. (2d) 718 (C. C. A. 9th 1939) and rejecting decisions of other courts which affirmed identical orders of the Commission without modification, modified the order as indicated above. Despite its strong protest in the Circuit Court the Federal Trade Commission failed to petition this court for a writ of certiorari.

It thus appears that the Seventh and Ninth Circuits still feel free to modify Federal Trade Commission orders when the occasion warrants. Moreover, even in the Second Circuit where the rule has been laid down which in effect makes the Federal Trade Commission the final authority as to remedy there is a good deal of confusion, if not outright disagreement, among the judges themselves.

For instance, in *Gelb v. Federal Trade Commission*, 144 F. (2d) 580 (C. C. A. 2nd 1944), the Commission had issued a cease and desist order part of which prohibited petitioner from representing that his preparation reconditioned the hair. The court stated that the Commission had found that the preparation in question was incapable of performing this function. Nevertheless, the court modified the order so as to permit the petitioner to employ the phrase "recondition the hair." The majority attempted to make it appear that the modification was based upon a lack of substantial evidence with regard to the particular in question. However, a reading of the most vigorous dissent by Judge Clark in that case reveals that he regards the majority opinion as being in contravention of the "no power" rule adopted in 1944. Judge Clark's precise, emphatic words were:

"Hence, even if we had control over the Commission's choice of remedy, I should think it quite a mistake to exercise it here. But we have protested most strongly and steadily recently that we have no such control. *Herzfeld v. Federal Trade Commission*, 2 Cir., 140 F. 2d, 207; *Parke, Austin & Lipscomb v. Federal Trade Comm.*, 2 Cir., 142 F. 2d, 437; *Charles of the Ritz Distributors Corp. v. Federal Trade Comm.*, *supra*."

It is significant to note that Judge Clark wrote the majority opinion in the *Charles of the Ritz* case* and concurred in the *Parke, Austin & Lipscomb* case,** both of which followed the *Herzfeld* rule.

Thus, it becomes clear that in this one Circuit, which has refused in Federal Trade Commission cases to follow the *Royal Milling* decision, there is confusion and even disagreement in the court itself.

A fair analysis of the *Gelb* decision leads to the conclusion that the Second Circuit which has in words enunciated the *Herzfeld* doctrine, in action will modify an order of the Commission when it disagrees strongly enough with it.

Statutory Construction

When recourse is had to the statute itself which governs the relationship between Court and Commission, the right of the court to modify Commission's orders would appear clear.

Section 5 of the Federal Trade Commission Act states that the jurisdiction of the Circuit Court of Appeals to modify orders of the Commission shall be exclusive and that the Court shall have the power to make and enter upon the pleadings a decree modifying the order of the Commission.

"To modify" has been defined in Funk & Wagnall's Standard Dictionary as:

"1. To make somewhat different; change more or less in character, properties, form or application; limit or restrict; vary; as to modify the de-

* 143 F. (2d) 676 (C. C. A. 2d 1944).

** 142 F. (2d) 437 (C. C. A. 2d 1944).

tails of a plan. 2. To make more moderate or less sweeping; reduce in degree or extent; qualify; as to modify a punishment."

The original Act creating the Federal Trade Commission was adopted in 1914. That Act was not substantially amended or changed in any respect until 1938 when, after careful consideration of various decisions which had been handed down by this Court and Circuit Courts in the intervening period, and upon request of the Federal Trade Commission, the Act was substantially amended to strengthen and enlarge the jurisdiction of the Federal Trade Commission and to include provisions relating to the finality of the Federal Trade Commission orders. The amending statute, introduced in the United States Senate, was reported by the Committee on Interstate Commerce to the 75th Congress, First Session.* That report contained a letter from the Acting Chairman of the Federal Trade Commission, dated February 11, 1936, discussing at length the proposed amendments and particularly the amendments to Section 5 of the Federal Trade Commission Act. Reference is therein made to many decisions of this Court and of the Circuit Courts, but no reference whatsoever was therein made, nor any exception taken, to the existing decisions whereunder it had been held that the Circuit Court did have the power to modify orders of the Federal Trade Commission.**

* Senate Report No. 221, Vol. I, Senate Reports on Public Bills, etc. Serial No. 10076.

** *Federal Trade Commission v. Hires Turner Glass Co.*, 81 Fed. (2nd) 362 (C. C. A. 3rd, 1935); *Federal Trade Commission v. Midwest Mills, Inc.*, 90 Fed. (2nd) 723 (C. C. A. 7th, 1936); *Fluegelman v. Federal Trade Commission*, 32 Fed. (2nd) (C. C. A. 2nd, 1930).

The Act, as finally adopted after conference report of the two Houses of Congress, is of exceptional significance in that Congress *specifically retained* the power in the Circuit Court to modify orders of the Federal Trade Commission. In columnar form, we set forth below excerpts from the Act, more particularly portions of Section 5 thereof, as the same existed prior to the amendment in 1938 and as the same read after the 1938 statute.

38 Stat. 719

Sec. 5 (p. 720)

* * *

"* * * Any part required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript *the court shall have the same jur-*

52 Stat. 111

Sec. 5(c).

"(c) Any person, * * * or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, * * * by filing in the court, * * * a written petition praying that the order of the Commission be set aside * * *. Upon such filing of the petition and transcript *the court shall have jurisdiction* of the proceeding and of the question determined therein, *and shall have power to make and enter* upon the pleadings, evidence, and proceed-

isdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

“The jurisdiction of the circuit court of appeals of the United States *to enforce, set aside, or modify* orders of the commission shall be exclusive.”

ings set forth in such transcript *a decree affirming, modifying or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed, * * *.*”

“(d) The jurisdiction of the circuit court of appeals of the United States *to affirm, enforce, modify, or set aside* orders of the Commission shall be exclusive.”

Here, then, is an amendment to the Act expressly recognizing and reenacting the Court's power of modification.

It is a well-recognized rule of statutory construction that where a legislature enacts a statute amending an existing law, it is presumed to have been cognizant of Court interpretations of that law. Any attempted alteration of judicial construction of the prior law must be expressed in clear and appropriate language, otherwise the statute will continue to be interpreted as theretofore by the Courts.

Johnson v. Manhattan Ry. Co., 289 U. S. 479, 500 (1933);

Hecht v. Malley, 265 U. S. 144, 153 (1924);

Heald v. District of Columbia, 254 U. S. 20 (1920);

Louisville Cement Co. v. Interstate Commerce Commission, 246 U. S. 638, 644 (1917);
Latimer v. U. S., 223 U. S. 541 (1912);
Commissioner of Internal Revenue v. F. G. Bonfils Trust, 115 Fed. (2nd) 788, 792 (C. C. A. 10th, 1940).

Moreover, it is a basic rule of statutory construction that each word in a statute must be given its full significance.

U. S. v. Lexington Mill Co., 232 U. S. 399 (1913);
Washington Market Co. v. Hoffman, 101 U. S. 112 (1879).

The *Royal Milling* case was the supreme law of the land at the time of the enactment of the 1938 Wheeler-Lea Amendment to the Federal Trade Commission Act. Its doctrine was being followed by the various circuits.*

Had the legislature intended to circumscribe the power of the court to modify orders of the Commission, it would have used appropriate language to that end. It is presumed to have acted with knowledge of those decisions and their effect. However, rather than limiting the powers of the Court the legislature utilized language which clearly comprehended the Court's powers and manifestly extended them for future application.

It is, therefore, respectfully submitted that an analysis of the *Royal Milling* case and the decisions in the various Circuits following thereupon, as well as the Federal Trade Commission Act itself, and as amended, establishes the proposition that this Court has the power to modify the instant order in the manner contended for herein.

* *Federal Trade Commission v. Hires Turner Glass Co.*, 81 Fed. (2nd) 362 (C. C. A. 3rd, 1935); *Federal Trade Commission v. Midwest Mills, Inc.*, 90 Fed. (2nd) 723 (C. C. A. 7th, 1937); *Fluegelman v. Federal Trade Commission*, 32 Fed. (2nd) 59 (C. C. A. 2nd, 1930).

The Power of the Circuit Court Over Punitive Orders

It is not inappropriate at this point to consider in connection with the problem of the Circuit Court's power of modification of the Commission's order the power resident in that Court.

An enforcement proceeding of the type sought herein by the Commission is comparable to a proceeding in equity and in which the principles of equity must be applied.

U. S. v. Morgan, 307 U. S. 183, 191 (1939);
Ford Motor Co. v. National Labor Relations Board, 305 U. S. 364, 373 (1938).

It has been uniformly stated that the functions of administrative orders is remedial and not punitive.

Republic Steel Corp. v. National Labor Relations Board, 311 U. S. 7 (1940);
Consolidated Edison v. National Labor Relations Board, 305 U. S. 197 (1938).

It is noteworthy that despite the apparent hard and fast rule in National Labor Relations cases with respect to the court's power of review over administrative remedies, this Court has applied the above principles to labor cases. Modification of National Labor Relations Board orders has been effected by the courts in two outstanding types of cases. These cases involved (1) re-instatement of employees, (2) back-pay to employees. In both instances the court has stressed the principle that affirmative action ordered by the Board must be designed to effectuate the purposes of the Act, and that its orders must be remedial rather than punitive. Recent decisions of this Court on this subject in which orders were modified are:

Southern Steamship Co. v. NLRB, 316 U. S. 31 (1942);

Republic Steel Corp. v. NLRB, 311 U. S. 7 (1940);

NLRB v. Fansteel Metallurgical Corp., 306 U. S. 240, 257 (1930).

The dissents in the above-cited labor cases pointedly decried the majority's unjustifiable interference with the "discretion" Congress had vested in the administrative agency. The rationale of these decisions must lie in the rule that while the court may be restricted in its control over the orders of the Labor Board, yet the Board itself is circumscribed in that its orders must effectuate the purposes of the Act and be remedial rather than punitive in nature.

The stated purposes of the Federal Trade Commission Act are to prevent unfair competition and deceptive acts in commerce. These are not accomplished by the destruction of the business or property of an alleged violator. Its purposes would be effectuated by the removal of the misimpression or deception to the public. The result sought to be accomplished should be to protect the public to the utmost while, at the same time, injuring the charged party only insofar as absolutely necessary. Any other result would be punitive rather than remedial. It might well be that the deception, in the instant case, could be removed by a cease and desist order against the petitioner continuing in business. This would, of course, protect the public fully. On the other hand, the purposes of the Act would not be effectuated. The Act does not encourage the destruction of a business, trade name or other property right. It does demand the outlawing of unfair trade practices and deception to the public.

In *Federal Trade Commission v. Eastman Kodak Co.*, 274 U. S. 619 (1927), we find this Court declaring itself on the limits of effectuating the purposes of the Federal Trade Commission Act by refusing to affirm an order of

the Federal Trade Commission ordering defendant to dispose of two plants which were employed as part of a scheme to monopolize the film trade.

In the case at bar, with the removal of any possible misinterpretation by the public as to, "Alpacuna" signifying a vicuna content, the further elimination of the trade name itself could serve no useful purpose at all to the public. Examination of the order of the Federal Trade Commission in the instant case demonstrates that the Commission has arrived at a punitive rather than a remedial result, warranting the court's review and modification. Petitioner desires to clarify any misimpression on the part of purchasing public regarding vicuna as one of the ingredient fibres in its coats. To do this it has volunteered to add the phrase "Contains No Vicuna" in a prominent manner and sub-joining the trade name "Alpacuna". As a matter of fact, petitioner has already put this into effect and this court's attention is respectfully called to the labels which are affixed to the petitioner's brief.

Here, then, is a method for destroying the misimpression and at the same time preserving the trade name. A method which remedies the wrong without needless punishment. Here is a method which effectuates the purposes of the Act by removing the sole alleged deception without depriving the petitioner and *Amicus Curiae* of the good will in this valuable trade name, built up over a period of years and at great expense.

The power of the court to modify the Commission's order, to deal equitably and effectively with the infraction in the instant case, stems from judicial decision and legislative enactment. The *Royal Milling* case is clear. The Act gives the court power to modify. "To modify" in the Act must mean more than innocuous modification, more than a mere grammatical or semantic alteration or rear-

rangement of the Commission's orders. There is no need for the institution of judicial review to fall into disrepute. Appellate judges need not confine themselves to "passive obedience" to administrative dictates.* The exercise of conscience and intelligence in any given situation requires the court to do more than merely stamp its blanket imprimatur upon any administrative order which comes before it for review.

Moreover, there is no reason automatically to apply the restraining rule of the National Labor Relations Board cases to Federal Trade Commission cases. One prominent writer concluding a thesis on judicial supervision over administrative agencies has stated:

"The approach suggested is a flexible doctrine of judicial review, the extent of which will vary from one agency to another dependent upon the function, exercise and the character of the individual and social interest involved, and will change in respect to a particular agency as the circumstances change."

Warner, *An Approach to the Extent of Judicial Supervision Over Administrative Agencies*, 28 Geo. L. J. 1042, 1073 (1940).

One difference between the effect of NLRB orders banning unfair labor practices and FTC orders banning the use of trade names is evident. An "unfair labor practice" is an excrescence. It is not part and parcel of a business. Its employment may lead to additional profits or may satisfy the inexorable whims or prejudices of an employer. But it is not that factor upon which a business is based. It can, therefore, be done away with without affecting the continuation of the business.

* See, Roscoe Pound, *Administrative Law and the Courts*, 24 Boston U. L. Rev. 201 (1944).

On the other hand, "Alpacuna", the trade name, is a vital part of the business itself. The two are almost inseparable. It is without economic realization to argue that petitioner's goods could be sold under another name. The same argument could be offered if the business were confiscated and the petitioner told that he still had the name and could therefore start a new business. The banning of a trade name assumes much more of a punitive aspect than would the barring of an unfair labor practice or the ordering of a defendant to deal with a particular union.

Consequently, prohibiting the use of a trade name immediately poses the question of "effectuation of the policy of the Act" just as would destruction of the business itself. The court has the right, the duty in fact, to remove the punitive effect of an order and to modify it so that it becomes remedial. This can be done in the instant case by modifying the order so as to permit the petitioner to use the trade name "Alpacuna" with the qualifying phrase "Contains No Vicuna".

The difference between the two agencies and the statutes creating them has in other circumstances been recognized.

International Mine Workers v. Eagle Picher Mining & Smelting Co., 325 U. S. 335 (1945);

American Chain & Cable Co. Inc. v. Federal Trade Commission, 142 Fed. (2nd) 909 (C. C. A. 4th, 1944).

Nor is the difference in court approach to different executive agencies and their powers unusual, or novel, although it may be the trend of decision, without any specific legislative authority therefor, to draw all agencies into the same circle or orbit.*

* See: Stern, Review of Findings of Administrators, Judges and Juries: A Comparative Analysis, 58 Harvard Law Review 70; McFarland, Judicial Control of the F. T. C. and the Interstate Commerce Commission (1933); *F. T. C. v. Curtis Publishing Co.*, 260 U. S. 568 (1923).

In view of the vast difference between the two agencies and their legislative history and the judicial treatment between the policies giving rise to their establishment, and the possible effects of their decrees upon business, and in view of the previous recognition by this and other courts of such distinctions, there exists no reason to conclude that, because the Circuit Court may be without power to modify an order of the National Labor Relations Board which is supported by substantial evidence, no such power exists with respect to orders of the Federal Trade Commission. In fact, it is clear and the Circuit Court so states, that the findings of fact made by the Commission can be translated effectively and equitably through a modified order giving consideration to the business interests of the respondent without in any sense being in derogation of the public interest.

No Contradiction by Qualifying Language

The Commission's argument that qualifying language cannot be used to contradict a trade name has no merit here. The word "Alpacuna" being meaningless* its con-

* It is the contention of the Commission that the "cuna" portion of "Alpacuna" signifies a vicuna content. As a matter of fact, the uncontradicted evidence as to the derivation of the name "Alpacuna" shows that the proper suffix is "una" and not "cuna". Even assuming the Commission's theory, "cuna" has no English meaning except to indicate a member of an obscure Indian tribe (Trial Examiner's Report, 11a). At the most it creates the impression of a soft fibre (R. 377a, 378a, 425a, 426a, 433a, 558a). It has been administratively declared that the "cuna" type trade name is "arbitrary and meaningless." (See remarks of Ass't. Commissioner of Patents in *New York Knitting Mills, Incorporated v. Gotham Knitting Mills, Incorporated*, 37 U. S. Patent Quarterly, p. 459 (1938); *New York Knitting Mills, Incorporated v. Rosenna Knitted Sportswear*, 37 U. S. Patent Quarterly, p. 460 (1938).) Cf. remarks of witness Richardson (R. 472a) who said that "una" in "Alpacuna" was as meaningless as "ena" in Wheatena.

tradiction would have to be meaningless. Herein lies the distinction between the case at bar and *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67 (1934). In the latter case, the word at issue was "white", a word of definite meaning. In our case, "Alpacuna", lacking any meaning cannot be contradicted by a phrase which does have meaning.

Further, even if there were to be attributed some meaning to the name "Alpacuna" as a combination of alpaca and vicuna, the explanatory phrase would still be proper. It has been established in Federal Trade Commission cases that if the trade name is not *per se* false, but is rather partially true and partially deceptive, qualifying language may be used to erase any possible deception.

Royal Milling Company v. Federal Trade Commission, 288 U. S. 212 (1933);

Federal Trade Commission v. Army & Navy Trading Co., 88 F. (2d) 776 (App. D. C. 1937).

In *Federal Trade Commission v. Army & Navy Trading Co.*, *supra*, the court, distinguishing such cases as the *Royal Milling Co.*, *Good Grape*, *Casoff* and *Fluegelman* cases from the matter at issue in that case, pointed out that in the former group of cases the selection of qualifying words effective to eliminate deception was feasible because the names involved made separate and distinct representations in respect of the origin and characteristics of single products, some of which were true and some untrue.

The court stated:

"Therefore, qualifying words could be chosen which would eliminate any deceptive representations and leave standing the truthful ones alone."

In the instant case, the sole portion of the name "Alpacuna" which is allegedly deceptive is the "cuna" suffix.

Certainly, any possible misimpression can quickly be eliminated by proper qualifying words, removing the alleged deceptive portion and leaving that which is admittedly truthful.

The Commission's Order is Not Justified by the Evidence

Entirely apart from any question of control over the remedy by the court, as such, *Amicus Curiae* respectfully submits that the order in the instant case should have been modified because it goes beyond the findings of fact and substantial evidence in the case.

Paragraph Nine of the Commission's findings contains the basis for the Commission's present order:

"The Commission, therefore, find that the name 'Alpacuna' is misleading and deceptive to a substantial portion of the purchasing public *in that* it represents or implies to such persons that respondent's coats contain material which they do not in fact contain." (Italics ours.) (R. 652a.)

That portion of the Commission's order which is in issue on this rehearing prohibits:

"Using the word 'Alpacuna' or any other word which in whole or in part is indicative of 'vieuna' to designate or describe respondent's coats; * * *"
(R. 655a).

The order transcends the findings of fact and the substantial evidence in the record in that it completely bars the use of "Alpacuna", whereas the evidence below merely shows that "Alpacuna" *standing alone* is allegedly deceptive to a substantial portion of the purchasing public. In fact, the record is even more narrowly restrictive and

affirmatively demonstrates through the Commission's own witnesses that a statement or explanation to the public that "vicuna" is not contained in the garments completely removes any possible misapprehension. An order prohibiting the use of "Alpacuna" *unless accompanied by qualifying phrase clearly indicating a lack of vicuna content* would thus conform both to the findings of fact and to the evidence in the case.

A striking example of the type of evidence adduced at the hearing sustaining the above contention appears in the testimony of Robert L. Cohen, a Commission witness, on cross-examination:

"A. And I would judge from that that it is alpaca and vicuna hair, with a cotton backing.

Q. Until you read the next sentence. Read that sentence. A. 'Alpacuna' is a registered trade name and is composed of alpaca, wool, and mohair pile on cotton backing.

Q. That is a perfectly clear description of what is in the coat? A. That is right.

Q. And it does not contain vicuna? A. That is right.

Q. So that no one reading that advertisement would have any doubt as to what was in that overcoat. A. That is true." (R. 214a.)

With regard to the record affirmatively showing no deception if proper qualification is made, we also respectfully refer the court to the testimony of Commission's witnesses Muchmore (R. 170a), Ballenger (R. 173a), West (R. 181a), Hardy (R. 184a), Ford (R. 255-6a), Test (R. 266-267a).

It is clear that the evidence below rested at the point that "Alpacuna" if *unexplained* was allegedly deceptive

to a substantial portion of the purchasing public. It is also evident that the record is without substantial evidence, in fact without any evidence at all, that "Alpacuna", when properly modified, is not deceptive. It is equally clear that the qualifying language "Contains No Vicuna", as offered herein, would completely eradicate any misapprehension of the consumer and any deception to the public.

It is, therefore, respectfully submitted that entirely apart from any considerations as to the power of the court over the remedy, as such, the order in this case should have been modified in order to conform to the findings of fact and the substantial evidence in the record. As it stands now that order is not based in substantial evidence.

The order should, at the very least have been modified so that it reads that the petitioner is prohibited from:

"Using the word 'Alpacuna' or any other word which in whole or in part is indicative of the word 'vicuna', without proper qualification indicating the absence of vicuna."

Accompanying the trade name with the phrase "Contains No Vicuna" would clearly dispel any possible inference of vicuna content. In this manner, due regard for the public, on the one hand, and consideration for the preservation of a valuable property right, on the other hand, would both be satisfied. This, we submit, is the only type of order which could be properly entered in this case in view of the present state of the record.

CONCLUSION

The Petition for the Writ of Certiorari should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 605

JACOB SIEGEL COMPANY,

Petitioner,

v.

FEDERAL TRADE COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR AMICUS CURIAE

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1945

No. 605

JACOB SIEGEL COMPANY,

Petitioner,

FEDERAL TRADE COMMISSION.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR AMICUS CURIAE

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

This brief is submitted on behalf of a group of retail stores which are outlets for petitioner's topcoats and overcoats sold under the trade name of "Alpacama." They appear as *amicus curiae* in support of the petitioner's writ of certiorari which brings up for review the mandate of the Circuit Court, Third Circuit, affirming *in toto* a cease and desist order of the Federal Trade Commission. The opinion of the Court below is reported at 150 F. (2d) 751 (R. 891).

The stores which appear are: Arnold Constable & Company, Incorporated, New York City; A. H. Benoit & Company, Portland, Maine; The William H. Block Company, Indianapolis, Indiana; Gimbel Brothers, Philadel-

phia, Pa.; The Larkey Company, Inc., Newark, New Jersey; Metropolitan Company, Dayton, Ohio; Maurice L. Rothschild, Chicago, Ill.; Samter Bros. Co., Scranton, Pa.; Harry Suffrin, Detroit, Michigan.

The interest of *Amicus Curiae* herein was set forth in the opinion of the Circuit Court as follows:

"A group of retail stores who handle the 'Alpacuna' coats have filed a brief, as *amicus curiae* in support of the petitioner's stand. Those stores set out that they have a very definite interest in the retention of the name by reason of co-operation in extensive advertising and selling the product over a period of years and that the barring of the use of the name 'Alpacuna' is a matter of serious detriment and direct prejudice to them" (R. 895).

Amicus Curiae respectfully calls this Court's attention to the fact that over eighty retail stores throughout the country, in addition to those specifically included as *Amicus Curiae*, have indicated to us their great interest in the preservation of the trade name of "Alpacuna". They, too, would have a "very definite interest in the retention of the name" and the prohibition of its use would be "a matter of serious detriment and direct prejudice to them" as well.

Basis of Jurisdiction

Jurisdiction is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938. The opinion of the Circuit Court of Appeals for the Third Circuit was filed November 30, 1944. A Petition for Rehearing was granted March 6, 1945, and the Court's original opinion confirmed in a final opinion filed September 20, 1945. An enforcement order

was entered October 9, 1945, and the enforcement thereof stayed to afford time for presentation of the issue to this Court. Certiorari was granted January 2, 1946.

Questions Presented

(1) Whether a Circuit Court of Appeals may modify an order of the Federal Trade Commission which it believes harsh and unreasonable, as was held proper in the case of *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212 (1933), and in other decisions of this Court and of the various Circuit Courts.

(2) Whether this Court has the power, asserted in the *Royal Milling* case, to modify an order of the Federal Trade Commission which it believes harsh and unreasonable.

Specifications of Error

Amicus Curiae, joining with petitioner, urge the following errors:

(1) The Court below erred in holding that it does not have the power to modify a remedy prescribed in a Federal Trade Commission cease and desist order which the Court believes to be unnecessarily harsh, destructive and unreasonable.

(2) The Court below erred in failing to hold the order of the Federal Trade Commission unconstitutional, invalid and contrary to the purposes of the Federal Trade Commission Act insofar as it unreasonably and unnecessarily destroys a valuable trade name.

Summary of Argument

Amicus Curiae submit that, regardless of any interpretation of other Acts creating administrative agencies, the statutory history of the Federal Trade Commission Act establishes that Congress intended the orders of this Commission to be subject to review by a court having power to modify harsh and arbitrary orders. Prior to the amendment of the Federal Trade Commission Act in 1938, this Court in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212 and in *Federal Trade Commission v. Beech-Nut Packing Company*, 257 U. S. 441, 455-6 (1922) had held that the appellate courts had the power to modify punitive orders of the Federal Trade Commission. The Federal Trade Commission Act was reenacted in substantially identical form by Congress with full knowledge of these decisions and without any objection thereto by the Commission which had asked Congress to modify the Act in many other respects.

The Court below argued that, by implication from certain National Labor Relations Board cases in this Court, the *Royal Milling Company* case had, in effect, been overruled. Those cases, it is submitted, did not enunciate the hard and fast rule, such as the Circuit Court below appears to have found, that appellate tribunals reviewing an administrative order are powerless with respect to the remedy invoked by the agency. In fact, other Circuit Courts have, subsequent to the said National Labor Relations Board cases, found no such hard and fast rule, for they modified Federal Trade Commission orders where required to effectuate the purposes of the Act.

Moreover, this Court has held in a line of decisions that the enforcement of administrative decrees is subject to the application of the principles of equity. Orders that are punitive in nature and or too broad in scope will not

be enforced. As recently as December 10, 1945, this Court in *May Department Stores v. National Labor Relations Board* reiterated those principles. Those decisions require that the order of the Federal Trade Commission in the instant case compelling the discontinuance of the use of the established trade name "Alpacuna" must be modified in the manner suggested. The proposed modification is in accord with decisions of this Court and of the Circuit Courts and, *as the Court below found*, can easily be effected (R. 898).

Finally, it is submitted that the portion of the cease and desist order in issue herein is not justified, in its sweeping and punitive form, by the findings of the Commission or the evidence produced before the Commission upon the hearings in the case.

Preliminary Statement

The Circuit Court below, in its original opinion, and obviously against its inclination, stated that it felt constrained to follow the views of another Circuit as to the respective powers of the Commission and the Court. That other Circuit arrived at its own conclusion by an interpretation of Supreme Court decisions applying to another administrative agency.

Expressing dissatisfaction with that part of the Commission's order which destroyed petitioner's valuable trade name built up over a period of years and at tremendous expense, the Court below wrote:

"* * * we think strongly that the order is far too harsh." (R. 898)

Later the Court stated:

"* * * if we were still in control of the remedy we would modify the order as above indicated." (R. 902)

The Court further observed:

"The infraction, as the case now stands is slight and could be cured by simple and qualifying language." (R. 898)

And again, as though weighing possible injury to the "substantial portion of the purchasing public" as against destruction of this valuable trade name of the petition, the Court stated:

"It destroys a widely favorable known trade name in existence for 14 years. It causes serious injury to the petitioner and its retail outlets." (R. 898)

Notwithstanding its expressed disagreement with the extreme harshness and broad scope of the Federal Trade Commission order and of the rule of law enunciated, the Circuit Court below affirmed the Commission's order without modification and, upon rehearing, felt constrained to abide by that decision.

The Statute and Applicable Decisions

The relevant portions of the Act here involved are:

"(a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

.

"The Commission is hereby empowered and directed to prevent persons . . . or corporations . . . from using unfair methods of competition in commerce and unfair and deceptive acts or practices in commerce."

15 U. S. C. A. Sec. 45 (a):

52 Stat. 111, Sec. 5.

"(c) Any person, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, by filing in the court, a written petition praying that the order of the Commission be set aside. Upon such filing of the petition and transcript the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, *modifying* or setting aside the order of the Commission, and enforcing the same *to the extent* that such order is affirmed. (Italics ours.)"

15 U. S. C. A. Sec. 45 (c);

52 Stat. 111, Sec. 5.

"(d) The jurisdiction of the circuit court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive."

15 U. S. C. A. Sec. 45 (d);

52 Stat. 111, Sec. 5.

It is respectfully submitted that the Circuit Court had the power under the Federal Trade Commission Act to enter the modification sought herein.

The last and leading case in this Court dealing with the power of a court to modify a Federal Trade Commission order is *Federal Trade Commission v. Royal Milling*

Co., 288 U. S. 212 (1933).^{*} Since that decision, no Federal Trade Commission case has been decided in the Supreme Court which deviates in any way from the rule enunciated therein. Furthermore, a study of the cases in the Supreme Court since that time reveals no opinion which has even distinguished or mentioned the *Royal Milling* case with disfavor.

Federal Trade Commission v. Royal Milling Co., *supra*, cited with approval cases arising in various Circuits in which orders of the Commission had been modified: *Fluegelman & Co. v. Federal Trade Commission*, 32 F. (2d) 59 (C. C. A. 2nd 1930); *Federal Trade Commission v. Cassoff*, 38 F. (2d) 790 (C. C. A. 2nd 1930); *Federal Trade Commission v. Good Grape Co.*, 45 F. (2d) 70 (C. C. A. 6th 1930).

Thereafter, courts in every Circuit wherein similar cases arose applied the rule of modification established by the *Royal Milling Co.* case: *Federal Trade Commission v. Hires Turner Glass Co.*, 81 F. (2d) 362 (C. C. A. 3rd 1935); *Etablissements Regaud, Inc. v. Federal Trade Commission*, 125 F. (2d) 590 (C. C. A. 2d, 1942); *Bear Mill Mfg. Co. Inc. v. Federal Trade Commission*, 98 F. (2d), 67 (C. C. A. 2d 1938); *Federal Trade Commission v. Midwest Mills, Inc.*, 90 F. (2d), 723 (C. C. A. 7th 1937).

Suddenly and without any previous indication, in 1944, one Circuit^{**} announced itself powerless to follow the

^{*} *The Royal Milling Co.* case was preceded by the opinion of this Court in *Federal Trade Commission v. Beech-Nut Packing Company*, 257 U. S. 441 (1922) wherein an order of the Federal Trade Commission, set aside by the Circuit Court below, was reinstated but as modified (pp. 455-456) upon the ground that the order was "too broad". This Court remanded to the Circuit Court below, with instructions to enter judgment limiting the cease and desist order to certain specific practices.

^{**} Exemplified by *Herzfeld v. Federal Trade Commission*, 140 F. (2d) 207 (C. C. A. 2d 1944).

Royal Miling case any longer despite the fact that this court had never itself taken that position. This unwarranted and unwise departure has not been followed in other Circuits in Federal Trade Commission cases.

Thus, in the Ninth Circuit, in *Ultra Violet v. Federal Trade Commission*, 143 F. (2d) 814 (C. C. A. 9th 1944), the court, although finding that the Commission's order was based on substantial evidence, refused to enforce a portion of it on the ground that it was too broad and **unfair to the petitioner**. It further modified the order as requested to eliminate the over-reaching effect of the prohibition on petitioner's advertising in one particular. It is significant to note that the Federal Trade Commission failed to apply for a writ of certiorari in that case but now maintains, in the case at bar, that there is no power in this court to modify.

The self-limitation of the Second Circuit upon its power to modify decisions of the Federal Trade Commission mentioned above was apparently based on its own interpretation of certain decisions under the National Labor Relations Act.* However, in 1942, one or two years after these same National Labor Relations Board cases had been determined by this Court, the Seventh Circuit in a Federal Trade Commission case modified an order of the Commission on the ground that it was unreasonable and "would serve no purpose in the protection of the public, but might limit petitioner in truthfully representing its product." The dissenting opinion in the case particularly demonstrates that the decision is one where the court disagrees with the Commission as to the nature and extent of the order required to remedy the evil complained of. Yet the majority feels free to modify in accordance with its own views.

*The *Herzfeld* case cited as its first two authorities: *International Assn. of Machinists v. National Labor Relations Board*, 311 U. S. 72 (1940) and *Phelps-Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177 (1941).

D. D. D. Corp. v. Federal Trade Commission, 125 F. (2d) 679 (C. C. A. 7th 1942).

Again, the Commission failed to apply for a writ of certiorari to this court.

Also in 1942, two years after the above labor cases were decided, the Ninth Circuit in *Lee Boyer's Candy v. Federal Trade Commission*, 128 F. (2d) 261 (C. C. A. 9th 1942), modified an order of the Federal Trade Commission. The Commission's order forbade petitioner from distributing merchandise so packed and assembled that sales of it to the public "are to be made or may be made by means of a game of chance, gift enterprise or lottery scheme." The court expunged the words "may be made" on the ground that the order thus written was too broad.

It is interesting to note that the Commission in that case, on page 11 of its brief, argued:

"The Commission is entitled to enter an order broad enough to prevent evasion."

Further, on page 15 of its brief, it protested:

"Such an order will in every sense afford petitioner as much protection as would a modified order to cease and desist at the same time avoiding a modification which will have the effect of leaving a loop-hole for evasion which is certainly closed and no more than closed by the use of the words in controversy."

Yet the court, following its previous decision in *Ardelle Inc. v. Federal Trade Commission*, 101 F. (2d) 718 (C. C. A. 9th 1939) and, rejecting decisions of other courts which affirmed identical orders of the Commission without modification, modified the order as indicated above. Despite its strong protest in the Circuit Court the Federal Trade

Commission failed to petition this court for a writ of certiorari.

It thus appears that the Seventh and Ninth Circuits still feel free to modify Federal Trade Commission orders when the occasion warrants. Moreover, even in the Second Circuit where the rule has been laid down which in effect makes the appellate courts powerless to modify the remedy as decreed by the Federal Trade Commission, there is a good deal of confusion, if not outright disagreement, among the judges themselves.

For instance, in *Gelb v. Federal Trade Commission*, 144 F. (2d) 580 (C. C. A. 2nd 1944), the Commission had issued a cease and desist order, part of which prohibited petitioner from representing that his preparation reconditioned the hair. The court stated that the Commission had found that the preparation in question was incapable of performing this function. Nevertheless, the court modified the order so as to permit the petitioner to employ the phrase "recondition the hair." The majority attempted to make it appear that the modification was based upon a lack of substantial evidence with regard to the particular in question. However, a reading of the most vigorous dissent by Judge Clark in that case reveals that he regards the majority opinion as being in contravention of the "no power" rule adopted in 1944. Judge Clark's precise, emphatic words were:

"Hence, even if we had control over the Commission's choice of remedy, I should think it quite a mistake to exercise it here. But we have protested most strongly and steadily recently that we have no such control. *Herzfeld v. Federal Trade Commission*, 2 Cir., 140 F. 2d, 207; *Parke, Austin & Lipscomb v. Federal Trade Comm.*, 2 Cir., 142 F. 2d, 437; *Charles of the Ritz Distributors Corp. v. Federal Trade Comm.*, *supra*."

It is significant to note that Judge Clark* wrote the majority opinion in the *Charles of the Ritz* case* and concurred in the *Parke, Austin & Lipscomb* case,** both of which followed the *Herzfeld* rule.

Thus, it becomes clear that in this one Circuit, which has refused in Federal Trade Commission cases to follow the *Royal Milling* decision, there is confusion and even disagreement in the court itself.

A fair analysis of the *Gelb* decision leads to the conclusion that the Second Circuit, which has in words enunciated the *Herzfeld* doctrine, in action will modify an order of the Commission when it disagrees strongly enough with it.

Statutory Construction

When recourse is had to the statute itself which governs the relationship between Court and Commission, the right of the court to modify the Commission's orders would appear clear.

Section 5 of the Federal Trade Commission Act states that the jurisdiction of the Circuit Court of Appeals to modify orders of the Commission shall be exclusive and that the Court shall have the power to make and enter upon the pleadings a decree modifying the order of the Commission.

"To modify" has been defined in Funk & Wagnall's Standard Dictionary as:

"1. To make somewhat different; change more or less in character, properties, form or application; limit or restrict; vary; as to modify the details of a plan. 2. To make more moderate or less

* 143 F. (2d) 676 (C. C. A. 2d 1944).

** 142 F. (2d) 437 (C. C. A. 2d 1944).

sweeping; reduce in degree or extent; qualify; as to modify a punishment."

The original Act creating the Federal Trade Commission was adopted in 1914. That Act was not substantially amended or changed in any respect until 1938 when, after careful consideration of various decisions which had been handed down by this Court and various Circuit Courts in the intervening period, and upon request of the Federal Trade Commission, the Act was substantially amended to strengthen and enlarge the jurisdiction of the Federal Trade Commission and to include provisions relating to the finality of the Federal Trade Commission orders. The amending statute, introduced in the United States Senate, was reported by the Committee on Interstate Commerce to the 75th Congress, First Session.* That report contained a letter from the Acting Chairman of the Federal Trade Commission, dated February 11, 1936, discussing at length the proposed amendments and particularly the amendments to Section 5 of the Federal Trade Commission Act. Reference is therein made to many decisions of this Court and of the Circuit Courts, but no reference whatsoever was therein made, nor any exception taken, to the existing decisions whereunder it had been held that the Circuit Court did have the power to modify orders of the Federal Trade Commission.**

* Senate Report No. 221, Vol. I, Senate Reports on Public Bills, etc./Serial No. 10076.

** Those existing decisions are exemplified, among others, by: *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212 (1933); *Federal Trade Commission v. Beech-Nut Packing Company*, 257 U. S. 441 (1922); *Federal Trade Commission v. Hires Turner Glass Co.*, 81 F. (2d) 362 (C. C. A. 3rd, 1935); *Federal Trade Commission v. Good-Grape Co.*, 45 F. (2d) 790 (C. C. A. 6th, 1930); *Fluegelman v. Federal Trade Commission*, 32 F. (2d) 59 (C. C. A. 2nd, 1930).

The Act, as finally adopted after conference report of the two Houses of Congress, is of exceptional significance in that Congress *specifically retained* the power in the Circuit Court to modify orders of the Federal Trade Commission. In columnar form, we set forth below excerpts from the Act, more particularly portions of Section 5 thereof, as the same existed prior to the amendment in 1938 and as the same read after the 1938 statute.

38 Stat. 719.

Sec. 5 (p. 720)

... Any part required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript *the court shall have the same jur-*

52 Stat. 111

Sec. 5(c).

“(c) Any person, * * * or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, * * * by filing in the court, * * * a written petition praying that the order of the Commission be set aside * * *. Upon such filing of the petition and transcript *the court shall have jurisdiction* of the proceeding and of the question determined therein, *and shall have power to make and enter upon the pleadings, evidence, and proceed-*

isdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, *and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.*

"The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive."

ings set forth in such transcript a decree affirming, modifying or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed. * * *

"(d) The jurisdiction of the circuit court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive."

Here, then, is an amendment to the Act expressly recognizing and reenacting the Court's power of modification.

It is a well-recognized rule of statutory construction that, where a legislature enacts a statute amending an existing law, it is presumed to have been cognizant of judicial interpretations of that law. Any attempted alteration of judicial construction of the prior law must be expressed in clear and appropriate language, otherwise the statute will continue to be interpreted as theretofore by the Courts.

Johnson v. Manhattan Ry. Co., 289 U. S. 479, 500 (1933);

Hecht v. Malley, 265 U. S. 144, 153 (1924);

Heald v. District of Columbia, 254 U. S. 20 (1920);

Louisville Cement Co. v. Interstate Commerce Commission, 246 U. S. 638, 644 (1917);
Latimer v. U. S., 223 U. S. 541 (1912);
Commissioner of Internal Revenue v. F. G. Bouffits Trust, 115 F. (2nd) 788, 792 (C. C. A. 10th, 1940).

Moreover, it is a basic rule of statutory construction that each word in a statute must be given its full significance.

U. S. v. Lexington Mill Co., 232 U. S. 399 (1913);
Washington Market Co. v. Hoffman, 101 U. S. 112 (1879).

The *Royal Milling* case was the supreme law of the land at the time of the enactment of the 1938 Wheeler-Lea Amendment to the Federal Trade Commission Act: Its doctrine was being followed by the various circuits.*

Had the legislature intended to circumscribe the power of the court to modify orders of the Commission, it would have used appropriate language to that end. It is presumed to have acted with knowledge of those decisions and their effect. However, rather than limiting the powers of the Court the legislature utilized language which clearly comprehended the Court's powers and manifestly extended them for future application.

It is, therefore, respectfully submitted that an analysis of the *Royal Milling* case and the decisions in the various Circuits following thereupon as well as the Federal Trade Commission Act itself, and as amended, establishes the proposition that the Circuit Court has the power to modify the instant order in the manner contended for herein.

* *Federal Trade Commission v. Hires Turner Glass Co.*, 81 F. (2d) 362 (C. C. A. 3rd, 1935); *Federal Trade Commission v. Midwest Mills, Inc.*, 90 F. (2d) 723 (C. C. A. 7th, 1937); *Fluegelman v. Federal Trade Commission*, 32 F. (2d) 59 (C. C. A. 2nd, 1930).

The Power of Appellate Courts Over Punitive Orders

It is not inappropriate at this point to consider, in connection with the problem of the Court's power of modification of the Commission's order, the power resident in the Court itself. In a very recent case in this Court* Mr. Justice Reed, speaking for the Court, discussed this problem with reference to the judicial power over orders of the National Labor Relations Board. By way of analogy, Mr. Justice Reed, discussing the scope of administrative orders and the question of judicial review, wrote:

"Equity has long been accustomed in other fields to reach conclusions as to the scope of orders which are necessary to prevent interference with the rights of those who seek the court's protection."

An enforcement proceeding of the type sought herein by the Commission is comparable to a proceeding in equity and in which the principles of equity must be applied.

National Labor Relations Board v. Express Publishing Co., 312 U. S. 426 (1941);

U. S. v. Morgan, 307 U. S. 183, 191 (1939);

Ford Motor Co. v. National Labor Relations Board, 305 U. S. 364, 373 (1938).

It has been uniformly stated that the functions of administrative orders is remedial and not punitive.

Republic Steel Corp. v. National Labor Relations Board, 311 U. S. 7 (1940);

Consolidated Edison v. National Labor Relations Board, 305 U. S. 197 (1938).

Cases involving the Court's power of review of the remedy in National Labor Relations Board cases are

* *May Department Stores v. National Labor Relations Board*, 14 U. S. L. W. 4042, 4045 (decided Dec. 10, 1945).

treated specifically at this point in view of the fact that the Second Circuit rule of "no power" in Federal Trade Commission cases is based upon labor decisions. The fact, however, is that this Court has itself enunciated and applied the principles of equity hereinabove stated to labor cases. Modification of National Labor Relations Board orders has been effected by the courts in two outstanding types of cases. These cases involved (1) re-instatement of employees, (2) back-pay to employees. In both instances the court has stressed the principle that affirmative action ordered by the Board must be designed to effectuate the purposes of the Act and that its orders must be remedial rather than punitive. Recent decisions of this Court on this subject in which orders were modified are:

Southern Steamship Co. v. N. L. R. B., 316 U. S. 31 (1942);

Republic Steel Corp. v. N. L. R. B., 311 U. S. 7 (1940);

N. L. R. B. v. Fansteel Metallurgical Corp., 306 U. S. 240, 257 (1930).

The Court below appears to have placed great reliance upon a certain footnote in the opinion of this Court in *Medo Photo Supply Corporation v. National Labor Relations Board*, 321 U. S. 678 (1944), which appears at the bottom of pages 681-682. In effect, however, this footnote does no more than to reaffirm the well-established and accepted rule that the finding of fact of an administrative agency will not be upset if supported by substantial evidence and that the question of weighing the value of testimony and determining the inferences to be drawn therefrom must rest with the administrative body. In no sense can this footnote be deemed to represent a departure by this Court from those equitable considerations governing judicial review of administrative orders as hereinabove enunciated. Quite to the contrary, the most recent expression of this Court in *May Department Stores v. National*

Labor Relations Board (decided December 10, 1945), 14 U. S. L. W. 4042, clearly reaffirms these principles. Mr. Justice Reed stated:

"The test of the proper scope of a cease and desist order is whether the Board might have reasonably concluded from the evidence that such an order was necessary to prevent the employer before it 'from engaging in any unfair labor practice affecting commerce.' Section 10(a). Equity has long been accustomed in other fields to reach conclusions as to the scope of orders which are necessary to prevent interferences with the rights of those who seek the court's protection. Injunctions in broad terms are granted even in acts of the widest content, when the court deems them essential to accomplish the purposes of the act. We think that the Board has the same power to determine the needed scope of cease and desist orders under the National Labor Relations Act that courts have, when authorized to issue injunctions, in other litigation.

"That power of the Board is subject to review under Section 10. While the Board has been delegated initially the exclusive authority to prevent unfair labor practices, courts, which are called upon to enforce such orders by their own decrees, may examine its scope to see whether on the evidence they go so beyond the authority of the Board as to require modification as a matter of law before enforcement. Section 10(a) and (c). *The Express Publishing Company* case declared:

'To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past.' (p. 437)

"We think that, in the circumstances of this proceeding, although there is a violation of Section 8 (1) as well as 8 (5), the violation of 8 (1) is so intertwined with the refusal to bargain with a unit asserted to be certified improperly that without a clear determination by the Board of an attitude of opposition to the purposes of the Act, to protect the rights of employees generally, the decree need not enjoin Company actions which are not determined by the Board to be so motivated."

The dissents in the *Southern S. S.* and *Faustel* cases, *supra*, pointedly decried the majority's unjustifiable interference with the "discretion" Congress had vested in the administrative agency. The rationale of these decisions must lie in the rule that while the court may be restricted in its control over the orders of the Labor Board, yet the Board itself is circumscribed in that its orders must effectuate the purposes of the Act and be remedial rather than punitive in nature.

The stated purposes of the Federal Trade Commission Act are to prevent unfair competition and deceptive acts in commerce.* These are not accomplished by the destruction of the business or property of an alleged violator. Its purposes would be effectuated by the removal of the misimpression or deception to the public. The result sought to be accomplished should be to protect the public to the utmost while, at the same time, injuring the charged party only insofar as absolutely necessary. Any other result would be punitive rather than remedial. It

* In an effort to determine impartially whether there was anything unfair or deceptive in the use of the trade name "Alpacuna", in that the coat contained no vicuna, a New York department store conducted a poll of over 200 customers chosen at random. Not one of them declared that the name "Alpacuna" indicated a vicuna content (see R. 893, Circuit Court opinion). In fact, not one single person even mentioned the rare and almost extinct animal vicuna.

might well be that the deception, in the instant case, could be removed by a cease and desist order against the petitioner continuing in business. This would, of course, protect the public fully. On the other hand, the purposes of the Act would not be effectuated. The Act does not encourage the destruction of a business, trade name or other property right. It does demand the outlawing of unfair trade practices and deception to the public.

In *Federal Trade Commission v. Royal Milling Company*, 288 U. S. 212, this Court, although sustaining the findings, modified the order and wrote:

"... we think under the circumstances the commission went too far in ordering what amounts to a suppression of the trade names. These names have been long in use, in one instance beginning as early as 1902. They constitute valuable business assets in the nature of good will, the destruction of which probably would be highly injurious and should not be ordered if less drastic means would accomplish the same result. The orders should go no further than is reasonably necessary to correct the evil and preserve the rights of competitors and public; and this can be done, in the respect under consideration, by requiring proper qualifying words to be used in immediate connection with the names." (p. 215)

In *Federal Trade Commission v. Eastman Kodak Co.*, 274 U. S. 619 (1927), we find this Court declaring itself on the limits of effectuating the purposes of the Federal Trade Commission Act by refusing to affirm an order of the Federal Trade Commission ordering defendant to dispose of two plants which were employed as part of a scheme to monopolize the film trade.

In *WOKO, Incorporated v. Federal Communications Commission* (C. A., D. C., decided January 21, 1946) the Federal Communications Commission, upon the hearing of an application for the renewal of the license of Station

WOKO, found as a fact that there had been a misrepresentation in the application to it and to its predecessor agency with respect to the beneficial ownership of a portion of the stock of the owning corporation. The Commission thereby concluded that the appellant "cannot be entrusted with the responsibilities of a licensee" and made the following express finding:

"The Commission, therefore, finds that a grant of the application for renewal of the license for the operation of WOKO by the appellant corporation would not serve public interest, convenience, or necessity and therefore should be denied."

The Court of Appeals for the District of Columbia reversed the order of the Federal Communications Commission. Discussing the provisions of that Act and the power of the Commission, the Court wrote:

"This limitation of judicial review of decisions of the appellee is consistent with the general body of law concerning the finality of administrative proceedings. The Congress of the United States, which has plenary power to regulate the radio industry, has designated the Commission as its administrative agent, because it desired to have the regulatory work done by technically trained experts, skilled and experienced in the technical duties of radio regulation. The Congress defined the scope of the authority of its agent or, as is sometimes said, it established the standard according to which the agent should act. The broad scope of authority, or standard of action, established by the Communications Act is that public interest, convenience and necessity must be served. Within that framework the administrative agent is free to exercise its expert judgment; it cannot act unconstitutionally, for neither could its principal, the Congress, and the

stream cannot rise higher than the source; it must proceed within the scope of the authority granted to it, that is to say, it must observe the standard established; *and it cannot act arbitrarily or capriciously.*" (Italics ours)

The opinion concludes with the following:

"Under the situation disclosed here, we conclude that the Commission acted arbitrarily in proceeding from its warranted conclusion that the stock ownership had been misrepresented to it, to the drastic decision that the continuance of the license would not be in the public interest, with the concomitant results of disestablishing an established satisfactory radio station and of imposing upon its corporate owner the entire loss of its good will and the serious impairment of the value of its capital assets."

In the *Woko* case, the Court of Appeals refused to allow the Federal Communications Commission to deny the application for license renewal because of the necessary resulting loss of good will and the serious impairment of the value of petitioner's capital assets. The Court took this step even though it meant the complete reversal of the Commission's order—this in spite of the fact that the petitioner had, through its representatives, falsified its reports for years and deceived the Commission. In the case at bar, the petitioner's request would only require a modification and not a reversal of the Commission's order and would fall within this Court's very ruling in the *Royal Milling* case that it would not countenance the elimination of trade names which constituted "valuable business assets in the nature of good will, the destruction of which probably would be highly injurious and should not be ordered if less drastic means will accomplish the same result" (p. 217).

The name "Alpacuna" had been the trade name of petitioner for more than thirteen years. Petitioner was the originator of this type of garment. It was conceded throughout the hearing that Jacob Siegel Company manufactured a fine product and was a reputable concern. As a matter of fact, a representative of the Better Business Bureau, testifying for the Commission, admitted that it had never received any complaint respecting the name "Alpacuna" (R. 40a) although it was widely advertised and nationally known.

The stores in whose behalf this brief is being filed, as well as other retailers selling this coat, running into the hundreds, have expended large sums of money in popularizing the name "Alpacuna". The Jacob Siegel Company itself has spent hundreds of thousands of dollars advertising the coat (R. 45a), and has built it up to a point where it is one of the largest trade name coats in the United States (R. 45a). The Commission's order depriving the Jacob Siegel Company and ultimately its distributing outlets from the use of this name in which they have a genuine equity and valuable good will clearly violates the holding, language and spirit of the cases cited above.

In the case at bar, with the removal of any possible misinterpretation by the public as to "Alpacuna" signifying a vicuna content, the further elimination of the trade name itself could serve no useful purpose at all to the public.* Examination of the order of the Federal

* Quite to the contrary, affirmance of this order will best serve all of the petitioner's imitators, users of the "cuna" or "ana" suffix, of which there are at least sixty-two (R. 305, 639(a), 640(a)). In passing, it will be noted that the Court in *Federal Trade Commission v. Good-Grape Company*, 45 F. 2d 70 (C. C. A. 6th 1930) mentioned the fact that respondent in that case might be placed upon an unequal footing with other soft drink or soda water manufacturers who were permitted to apply to their products the names of a fruit or some variety thereof indicative of flavoring only rather than of a claim that the beverage was in fact produced from the fruit.

Trade Commission in the instant case demonstrates that the Commission has arrived at a punitive rather than a remedial result, warranting the court's review and modification. Petitioner desires to clarify any misimpression on the part of purchasing public regarding vicuña as one of the ingredient fibres in its coats. To do this it has volunteered to add the phrase "Contains No Vicuña" in a prominent manner and sub-joining the trade name "Alpacuña". As a matter of fact, petitioner has already put this into effect and this court's attention is respectfully called to the labels which are affixed to the petitioner's brief.

Here, then, is a method for destroying the misimpression and at the same time preserving the trade name. A method which remedies the wrong without needless punishment. Here is a method which effectuates the purposes of the Act by removing the sole alleged deception without depriving the petitioner and *Amicus Curiae* of the good will in this valuable trade name, built up over a period of years and at great expense.

The power of the court to modify the Commission's order, to deal equitably and effectively with the infraction in the instant case, stems from judicial decision and legislative enactment. The *Royal Milling* case is clear. The Act gives the court power to modify. "To modify" in the Act must mean more than innocuous modification, more than a mere grammatical or semantic alteration or rearrangement of the Commission's orders. There is no need for the institution of judicial review to fall into disrepute. Appellate judges need not confine themselves to "passive obedience" to administrative dictates.* The exercise of conscience and intelligence in any given situation requires the court to do more than merely stamp its blanket imprimatur upon any administrative order which comes before it for review.

* See, Roscoe Pound, *Administrative Law and the Courts*, 24 Boston U. L. Rev. 201 (1944).

Moreover, even assuming the interpretation of the Second Circuit as to the restraining rule of National Labor Relation Board cases, it does not follow that such decisions would or should automatically be applied to Federal Trade Commission cases. One prominent writer concluding a thesis on judicial supervision over administrative agencies has stated:

"The approach suggested is a flexible doctrine of judicial review, the extent of which will vary from one agency to another dependent upon the function, exercise and the character of the individual and social interest involved, and will change in respect to a particular agency as the circumstances change."

Warner, *An Approach to the Extent of Judicial Supervision Over Administrative Agencies*, 28 Geo. L. J. 1042, 1073 (1940).

One difference between the effect of N. L. R. B. orders banning unfair labor practices and F. T. C. orders banning the use of trade names is evident. An "unfair labor practice" is an excrescence. It is not part and parcel of a business. Its employment may lead to additional profits or may satisfy the inexorable whims or prejudices of an employer. But it is not that factor upon which a business is based. It can, therefore, be done away with without affecting the continuation of the business.

On the other hand, "Alpacuma", the trade name, is a vital part of the business itself. The two are almost inseparable. It is without economic realization to argue that petitioner's goods could be sold under another name. The same argument could be offered if the business were confiscated and the petitioner told that he still had the name and could therefore start a new business. The banning of a trade name assumes much more of a punitive aspect than would the barring of an unfair labor practice or the ordering of a defendant to deal with a particular union.

Consequently, prohibiting the use of a trade name immediately poses the question of "effectuation of the policy of the Act" just as would destruction of the business itself. The court has the right, the duty in fact, to remove the punitive effect of an order and to modify it so that it becomes remedial. This can be done in the instant case by modifying the order so as to permit the petitioner to use the trade name "Alpacuna" with the qualifying phrase "Contains No Vienna".

The difference between the two agencies and the statutes creating them has in other circumstances been recognized.

International Mine Workers v. Eagle Picher Mining & Smelting Co., 325 U. S. 335 (1945);

American Chain & Cable Co., Inc. v. Federal Trade Commission, 142 F. (2d) 909 (C. C. A. 4th, 1944);

National Labor Relations Board v. National Motor Bearing Co., 105 F. (2d) 652, 661 (C. C. A. 9th, 1939).*

In view of the vast difference between the two agencies, their legislative history and judicial treatment, between the policies giving rise to their establishment and the possible effects of their decrees upon business, and in view of the previous recognition by this and other courts of those distinctions, there exists no reason to conclude that decisions under the National Labor Relations Act are necessarily and automatically determinative of the power of the court to modify orders of the Federal Trade Commission.

* The difference between the Federal Trade Commission and other agencies has also been recognized: Stern, Review of Findings of Administrators, Judges and Juries: A Comparative Analysis, 58 Harvard Law Review 70; McFarland, Judicial Control of the F. T. C. and the Interstate Commerce Commission (1933); Paul, *Dobson v. Commissioner: The Strange Ways of Law and Fact*, 57 Harvard Law Review 753, 761 (note 33), 766 (note 48); *F. T. C. v. Curtis Publishing Co.*, 260 U. S. 568, 580 (1923).

If there is one fact in this case that stands out above all, it is clear, and the Circuit Court so states, that the findings of fact made by the Commission can be translated effectively and equitably through a modified order giving consideration to the business interests of the petitioner and of *Amicus Curiae*, without in any sense being in derogation of the public interest.

No Contradiction by Qualifying Language

The Commission's argument that qualifying language cannot be used to contradict a trade name has no merit here. The word "Alpacuna" being meaningless* its contradiction would have to be meaningless. Herein lies the distinction between the case at bar and *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67 (1934). In the latter case, the word at issue was "white", a word of definite meaning. In our case, "Alpacuna", lacking any meaning cannot be contradicted by a phrase which does have meaning.

The argument of the Commission against the use of any explanatory phrase for the alleged reason that it could not eradicate the purported deception runs counter to the decisions in *Federal Trade Commission v. Good-Grape Company*, 45 F. (2d) 70 (C. C. A. 6th 1930):

* It is the contention of the Commission that the "cuna" portion of "Alpacuna" signifies a vicuna content. As a matter of fact, the uncontradicted evidence as to the derivation of the name "Alpacuna" shows that the proper suffix is "una" and not "cuna". Even assuming the Commission's theory, "cuna" has no English meaning except to indicate a member of an obscure Indian tribe (Trial Examiner's Report, 11a). It has been administratively declared that the "cuna" type trade name is "arbitrary and meaningless." (See remarks of Asst Commissioner of Patents in *New York Knitting Mills, Incorporated v. Gotham Knitting Mills, Incorporated*, 37 U. S. Patent Quarterly, p. 459 (1938); *New York Knitting Mills, Incorporated v. Rosenna Knitted Sportswear*, 37 U. S. Patent Quarterly, p. 460 (1938).) Cf. remarks of witness Richardson (R. 472a) who said that "una" in "Alpacuna" was as meaningless as "ena" in Wheatena.

Federal Trade Commission v. Cassoff, 38 F. (2d) 790 (C. C. A. 2nd 1930) and *N. Fluegelman & Co. Inc. v. Federal Trade Commission*, 37 F. (2d) 59 (C. C. A. 2nd 1930), all of which were cited with specific approval by this Court in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212.

Those cases and the case at bar are dissimilar from the "Havana Cigar" case (*H. N. Heuser & Son v. Federal Trade Commission*, 106 F. (2d) 596 (C. C. A. 3d, 1939) and the "Duraleather" case (*Masland Duraleather Company v. Federal Trade Commission*, 34 (2d) 733 (C. C. A. 3d, 1929)). These two latter decisions fall into the type represented by and most ably analyzed in *Federal Trade Commission v. Army & Navy Trading Co.*, 88 F. (2d) 776, 779-780 (C. C. A., D. C., 1937). The Court in that decision drew a distinction between the facts involved in the "Havana Cigar" and "Duraleather" cases, and the facts involved in the *Royal Milling Company*, the *Fluegelman*, the *Good-Grape* and the *Cassoff* cases. Analyzing the last four mentioned cases, the Court expressed most aptly the basis for these holdings as follows:

"But it will be noted that in these cases the selection of qualifying words effective to eliminate deception was feasible because the names involved made separate and distinct representations in respect of the origin and characteristics of single products, some of which representations were true and some of which were untrue. Thus in *Federal Trade Commission v. Royal Milling Co.*, the representation of the word 'Milling' as to mixing and blending of the flour was true, but the representation as to the origin of the flour, i.e., as to by whom it was ground, was untrue. In *N. Fluegelman & Co. v. Federal Trade Commission*, the representation of the words 'Satinmaid' and 'Satinized' that the fabric had a satin weave was true, but the representation that it had a silk content was not. In

Federal Trade Commission v. Good-Grape Co., the representation of the phrases 'Good-Grape' and 'Fruit of the Vine' that the product was like grape juice in color and flavor was true but the representation that it was made of natural grape juice was untrue. In Federal Trade Commission v. Cassoff, the representation of the phrases 'White Shellac' and 'Orange Shellac' that the product was composed solely of genuine shellac gum dissolved in alcohol was untrue, but the representation that it was like shellac, or that it could be used for the purpose of shellac, was true. *Therefore, qualifying words could be chosen which would eliminate any deceptive representations and leave standing the truthful ones alone.* Thus in Federal Trade Commission v. Royal Milling Co., the qualifying words 'Not Grinders of Wheat' indicated definitely that the grain from which the flour is made did not originate with, i.e., was not ground by, the Royal Milling Company, but left standing the representation that the flour was mixed and blended by that Company; *and in the other three cases, the qualifying words clearly eliminated the deceptive representations of what the characteristics of the products were not, but left standing the true representations as to what the characteristics were.*" (Italics ours.)

This applies equally as well to the instant case. The "Alpacuna" coat has a substantial alpaca fiber content. It has, moreover, a vicuna finish.* The only possible contention of falsity with respect to the name "Alpacuna",

* The Trial Examiner himself stated that he believed "any association with name 'Alpacuna' represents a finish" (R. 420) and numerous witnesses testified that vicuna meant a finish (R. 415a, 417a, 426a, 433a, 497a, 538a, 561a).

and more particularly to the "vicuna", lies in the contention that it may, by a far-fetched and unreasonable interpretation, imply an actual vicuna fiber content. Certainly any such possible impression can easily and quickly be eliminated by proper qualifying words, removing the alleged deceptive portion and leaving that which is admittedly truthful.

In concluding the discussion and analysis of those cases applicable to the validity of the within order in so far as it completely prohibits the use of the trade name "Alpacuna", it is respectfully suggested that the facts in the case at bar justify a modification of the Commission's order far more than in any case cited above. In the *Royal Milling* case, the word "Mill" was actually used. In the *Good-Grape Company* case, while the product con-

* The Commission alleged that a substantial portion of the purchasing public was given the impression that the garment contains vicuna. As a matter of fact, the vicuna is undisputably a rare and almost extinct undomesticated South American animal (R. 176a). To obtain the animal's hair it is necessary to kill it. Such slaughter is strictly regulated by the Government of Peru, the animal's habitat. The vicuna is so rare that the National Zoo in Washington once had a pair which died in 1918 and 1920 and, at the time of the hearings, the Zoo had been unsuccessful in replacing them (R. 188a). A representative of that Zoo testified that the vicuna was the rarest animal in captivity (R. 189a). Its pictures are not to be found in textbooks (R. 175a). According to a booklet of the United States Department of Commerce, the last importation of vicuna was only two thousand pounds, a two year's supply (R. 241a). This is to be compared with the importation of millions of pounds of other types of fibres (R. 541a).

Vicuna fibre is not a commercial product (R. 387a). It is very perishable (R. 402a). Even in normal times it is not offered in the open market (Trial Examiner's Report, p. 12a).

Vicuna coats are priced as high as \$900 (R. 34a), and not more than five or six such coats are made in the United States in a year or two (Trial Examiner's Report, p. 13a). This is to be compared with the "Alpacuna" coat which retails at about \$40 and which is one of the largest selling coats in the United States (R. 45a).

tained no grape or grape-juice, nevertheless, the use of the words "grape" or "fruit of the vine" was permitted. In the *Cassoff* case, "shellac" was specifically used, and in the *Fluegelman* case "satin" actually was a part of the trade name.

In the case at bar, however, the word "vicuña" does not appear as such in the trade name. It is merely contended that "cuna" as part of "Alpacuna" implies to the public the presence of vicuña. Administrative authority has declared "cuna" to be meaningless (*supra*, p. 28 fn.) and, in fact, an assumption that "Alpacuna" was derived from "cuna" is contrary to the uncontradicted evidence in the record as to the derivation of the name.

Certainly, in a situation of this type, where deception to the public can only be claimed by questionable interpretation of and reading a meaning into a trade name, there is even more reason why that trade name, a valuable business assets developed over a period of years, should not be destroyed when less drastic means could clearly accomplish the same result.

This case above all cases is one where, in the words of this Court in *Federal Trade Commission v. Royal Milling Company*, 282 U. S. 212, the evil, if any, could be corrected and the rights of the public protected by allowing the continued use of the trade name with proper qualification.

The Commission's Order is Not Justified by the Evidence

Entirely apart from any question of control over the remedy by the court, as such, *Amicus Curiae* respectfully submits that the order in the instant case should have been modified because it goes beyond the findings of fact and substantial evidence in the case.

Paragraph Nine of the Commission's findings contains the basis for the Commission's present order:

"The Commission, therefore, find that the name 'Alpacuna' is misleading and deceptive to a substantial portion of the purchasing public *in that* it represents or implies to such persons that respondent's coats contain material which they do not in fact contain." (Italics ours)-(R. 652a)

That portion of the Commission's order which is in issue on this rehearing prohibits:

"Using the word 'Alpacuna' or any other word which in whole or in part is indicative of 'vicuña' to designate or describe respondent's coats: . . ."
(R. 655a).

The order transcends the findings of fact and the substantial evidence in the record in that it completely bars the use of "Alpacuna", whereas the evidence below merely shows that "Alpacuna" *standing alone* is allegedly deceptive to a substantial portion of the purchasing public. In fact, the record is even more narrowly restrictive and affirmatively demonstrates through the Commission's own witnesses that a statement or explanation to the public that "vicuña" is not contained in the garments completely removes any possible misapprehension. An order prohibiting the use of "Alpacuna" *unless accompanied by qualifying phrase clearly indicating a lack of vicuña content* would thus conform both to the findings of fact and to the evidence in the case.

A striking example of the type of evidence adduced at the hearing sustaining the above contention appears in the testimony of Robert L. Cohen, a Commission witness, on cross-examination:

"A. And I would judge from that that it is alpaca and vicuña hair, with a cotton backing.

Q. Until you read the next sentence. Read that sentence. A. 'Alpacuna' is a registered trade name

and is composed of alpaca, wool, and mohair pile on cotton backing.

Q. That is a perfectly clear description of what is in the coat? A. That is right.

Q. And it does not contain vicuna? A. That is right.

Q. So that no one reading that advertisement would have any doubt as to what was in that overcoat. A. That is true." (R. 214a)

With regard to the record affirmatively showing no deception if proper qualification is made, we also respectfully refer the court to the testimony of Commission's witnesses Mushmore (R. 170a), Ballenger (R. 173a), West (R. 181a), Hardy (R. 184a), Ford (R. 255-6a), Test (R. 266-267a).

It is clear that the evidence below rested at the point, that "Alpacuna" if *unexplained* was allegedly deceptive to a substantial portion of the purchasing public. It is also evident that the record is without substantial evidence, in fact without any evidence at all, that "Alpacuna", when properly modified, is not deceptive. It is equally clear that the qualifying language "Contains No Vicuna", as offered herein, would completely eradicate any misapprehension of the consumer and any deception to the public. Thus, since the proposed labels clearly vitiate any danger of public deception in the future, the order prohibiting the use of the trade name "Alpacuna" was entirely unjustified and should be modified as herein-after suggested.

National Labor Relations Board v. Express Publishing Company, 312 U. S. 426, 437 (1941).

It is, therefore, respectfully submitted that entirely apart from any considerations as to the power of the court over the remedy, as such, the order in this case should have been modified in order to conform to the

findings of fact and the substantial evidence in the record. As it stands now that order is not based in substantial evidence.

The order should, at the very least have been modified so that it reads that the petitioner is prohibited from:

“Using the word ‘Alpacuna’ or any other word which in whole or in part is indicative of the word ‘vicuna’, without proper qualification indicating the absence of vicuna.”

Accompanying the trade name with the phrase “Contains No Vicuna” would clearly dispel any possible inference of vicuna content. In this manner, due regard for the public, on the one hand, and consideration for the preservation of a valuable property right, on the other hand, would both be satisfied. This, we submit, is the only type of order which could be properly entered in this case in view of the present state of the record.

CONCLUSION

The decree of the Circuit Court of Appeals for the Third Circuit should be reversed and the proceeding remanded to that court with a mandate to enter a modified order permitting the use of the trade name with proper qualification indicating the absence of vicuna.

Respectfully submitted,

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MARVIN J. BLOCH,
On the Brief.

SUPREME COURT OF THE UNITED STATES.

No. 605.—OCTOBER TERM, 1945.

Jacob Siegel Company, Petitioner, } On Writ of Certiorari to
vs. } the United States Circuit
Federal Trade Commission. } Court of Appeals for the
Third Circuit.

[March 25, 1946.]

Mr. Justice DOUGLAS delivered the opinion of the Court.

The alpaca and the vicuña are animals whose fleece is used in the manufacture of fabrics. The fleece of the vicuña is, indeed, one of the finest and is extremely rare; and fabrics made of it command a high price. Petitioner manufactures overcoats and topcoats and markets them under the name Alpacuna. They contain alpaca, mohair, wool, and cotton but no vicuña.

The Federal Trade Commission in proceedings under § 5 of the Federal Trade Commission Act (52 Stat. 111, 15 U. S. C. § 45) found that petitioner had made certain misrepresentations in the marketing of its coats. It found, for example, that the representations that the coats contained imported angora and guanaco were false. It also found that the name Alpacuna is deceptive and misleading to a substantial portion of the purchasing public, because it induces the erroneous belief that the coats contain vicuña. But there was no finding that petitioner had made representations that Alpacuna in fact contained vicuña. It accordingly issued a cease and desist order¹ which, among other things,

1 It ordered petitioner to cease and desist from

- "1. Representing that respondent's coats contain guanaco hair.
- "2. Representing that the Angora goat hair or mohair used in respondent's coats is imported from Turkistan or any other foreign country.
- "3. Representing through the use of drawings or pictorial representations, or in any other manner, that respondent's coats contain fibers or materials which they do not in fact contain.
- "4. Representing that coats made of fabrics which have a cotton backing are composed entirely of wool or of wool and hair.
- "5. Using any advertising matter or campaign, aiding, encouraging, or promoting the use by dealers of any advertising matter which purports to disclose the constituent fibers or materials of coats composed in part of cotton, unless such advertising matter clearly discloses such cotton content along with such other fibers or materials.
- "6. Using the word 'Alpacuna,' or any other word which in whole or in part is indicative of the word 'vicuña,' to designate or describe respondent's coats; or otherwise representing, directly or by implication, that respondent's coats contain vicuña fiber."

banned the use of the word Alpacuna to describe petitioner's coats. 36 F. T. C. 563. The Circuit Court of Appeals affirmed. 150 F. 2d 751. It held that the Commission's findings respecting the use of the name Alpacuna were supported by substantial evidence. It was of the view, however, that the prohibition of the use of the name was far too harsh; and it stated that it would have modified the order to permit Alpacuna to be used with qualifying language had it thought that *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, was still a controlling authority. But it concluded that that case had been so limited by subsequent decisions of the Court, involving other administrative agencies, that control of the remedy lay exclusively with the Commission. The case is here on a petition for a writ of certiorari which we granted because of the importance of the question presented.

By the Federal Trade Commission Act Congress made unlawful "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce." § 5(a). It provided that when the Commission's cease and desist orders were challenged in the courts, the findings of the Commission "as to the facts, if supported by evidence, shall be conclusive." § 5(c). But it did not limit the reviewing court to an affirmance or reversal of the Commission's order. It gave the court power to modify the order as well.²

The power to modify extends to the remedy as *Federal Trade Commission v. Royal Milling Co.*, *supra*, indicates. In that case, the Commission barred the use of the words "milling company" since the company, though blending and mixing flour, did not manufacture it. The Court concluded that a less drastic order was adequate for the evil at hand and remanded the case so that the Commission might add appropriate qualifying words which would eliminate any deception lurking in the trade name. On the other hand, the excision of a part of the trade name was sustained in *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67. In that case, "California white pine" was being used to describe what was botanically a yellow pine. The Commission prohibited the use of the word "white" in conjunction with "pine" to describe the product. The Court sustained the order.

² See, 5(c) provides that the court "shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed"

The Commission has wide discretion in its choice³ of a remedy deemed adequate to cope with the unlawful practices in this area of trade and commerce. Here, as in the case of orders of other administrative agencies under comparable statutes,⁴ judicial review is limited. It extends no further than to ascertain whether the Commission made an allowable judgment in its choice of the remedy. As applied to this particular type of case, it is whether the Commission abused its discretion in concluding that no change "short of the excision" of the trade name would give adequate protection. *Federal Trade Commission v. Algoma Lumber Co.*, *supra*, pp. 81-82. The issue is stated that way for the reason that we are dealing here with trade names which, as *Federal Trade Commission v. Royal Milling Co.*, *supra*, p. 217, emphasizes, are valuable business assets. The fact that they were adopted without fraudulent design or were registered as trade-marks does not stay the Commission's hand. *Federal Trade Commission v. Algoma Lumber Co.*, *supra*, p. 79; *Charles of the Ritz Distributors Corp. v. Federal Trade Commission*, 143 F. 2d 676, 679. But the policy of the law to protect them as assets of a business indicates that their destruction "should not be ordered if less drastic means will accomplish the same result." *Federal Trade Commission v. Royal Milling Co.*, *supra*, p. 217. The problem is to ascertain whether that policy and the other policy of preventing unfair or deceptive trade practices can be accommodated. That is a question initially and primarily for the Commission. Congress has entrusted it with the administration of the Act and has left the courts with only limited powers of review. The Commission is the expert body to determine what remedy is necessary to eliminate the unfair or deceptive trade practices which have been disclosed. It has wide latitude for judgment and the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist.

But in the present case, we do not reach the question whether the Commission would be warranted in holding that no qualifying

³ See *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72, 82; *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, 194; *Virginia Electric Co. v. National Labor Relations Board*, 319 U. S. 533, 543; *Franks Bros. Co. v. National Labor Relations Board*, 321 U. S. 702, 704-705; *Board of Trade v. United States*, 314 U. S. 534, 548; *Federal Security Adm'r v. Quaker Oats Co.*, 318 U. S. 218, 227, 229; *Northwestern Electric Co. v. Federal Power Commission*, 321 U. S. 116, 123-124.

language⁴ would eliminate the deception which it found lurking in the word Alpacuna. For the Commission seems not to have considered whether in that way the ends of the Act could be satisfied and the trade name at the same time saved.⁵ We find no indication that the Commission considered the possibility of such an accommodation. It indicated that prohibition of the use of the name was in the public interest since the cease and desist order prohibited the further use of the name.⁶ But we are left in the dark whether some change of name short of excision would in the judgment of the Commission be adequate. Yet that is the test, as the *Algoma Lumber Co.* and the *Royal Milling Co.* cases indicate. Its application involves the exercise of an informed, expert judgment. The Commission is entitled not only to appraise the facts of the particular case and the dangers of the marketing methods employed (*Federal Trade Commission v. Winsted-Hosmer Co.*, 258 U. S. 483, 494) but to draw from its generalized experience. See *Republic Aviation Corp. v. National Labor Relations Board*, 324 U. S. 793, 801-805. Its expert opinion is entitled to great weight in the reviewing courts. But the courts are not ready to pass on the question whether the limits of discretion have been exceeded in the choice of the remedy until the administrative determination is first made.

The judgment is reversed and the cause is remanded to the Circuit Court of Appeals for further proceedings in conformity with this opinion.

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

⁴ Petitioner now uses labels reading "Alpacuna Coat - contains no vicuña" and specifies the fibre content of the cloth. See 54 Stat. 1128, 15 U. S. C. 108.

⁵ The opinion of the Commission goes no further than to find that "the name 'Alpacuna' is misleading and deceptive to a substantial portion of the purchasing public in that it represents or implies" that the coats contain vicuña; and that as a result substantial trade is diverted to respondent from its competitors.

⁶ This appears not from the opinion but from the paragraph following the order entered by the Commission:

"Commissioner Freer dissents from so much of the order as wholly prohibits the continued use of the trade name 'Alpacuna' for the reason that this trade name, which has been in use for more than thirteen years, is a valuable business asset, and is neither deceptive per se, nor is the testimony concerning its tendency or capacity to deceive sufficiently clear and convincing as to render such prohibition of its use necessary in the public interest.

"A majority of the Commission do not agree with either Commissioner Freer's statements of fact or his conclusions of law."